

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PENNY NINIVAGGI, et al.,)
individually and on behalf)
of all others similarly)
situated)

Plaintiffs)

v.)

Civil Action No.
20-cv-1478-SB

UNIVERSITY OF DELAWARE)

Defendant)

HANNAH RUSSO, individually)
and on behalf of all)
others similarly situated)

Plaintiffs)

v.)

Civil Action No.
20-cv-1693-SB

UNIVERSITY OF DELAWARE)

Defendant)

The remote video-recorded deposition STEVEN P.
GASKIN of was taken pursuant to notice before Ellen
Corbett Hannum, Registered Merit Reporter, in Wilmington,
Delaware, on Friday, August 12, 2022, beginning at
9:32 a.m., there being present:

VERITEXT LEGAL SOLUTIONS

Mid-Atlantic Region

300 Delaware Avenue Suite 815

Wilmington, DE 19801

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<p style="text-align: right;">Page 14</p> <p>1 I arranged with my people to produce all the responsive 2 documents. 3 BY MR. SINGER: 4 Q. Who did you have that conversation with and 5 when? 6 A. With Mr. Arisohn and -- not long ago. I'm not 7 sure exactly when. 8 Q. What's your best estimate? 9 A. Either last week or this week. I just don't 10 remember. 11 Q. You said you talked with your people about 12 gathering documents. Who was that that you spoke with? 13 A. There is a woman named Patricia Yanes of 14 Applied Marketing Science who helped me. 15 Q. Anyone else? 16 A. Not that I know of. 17 Q. Let me be clear, is AMS part of this 18 engagement? Is AMS doing work on behalf of the 19 plaintiffs in this case? 20 A. Yes, under my direction. 21 Q. Who are the -- who is the team at AMS that is 22 involved beyond Patricia, if anybody? 23 A. There's a woman named Carrie Blasko and then 24 an analyst named Rachael, I can't remember her exact last</p>	<p style="text-align: right;">Page 16</p> <p>1 the work you have performed in this case? 2 A. Ms. Yanes is manager of the practice at AMS 3 that works on class action conjoints. So she was 4 participating in this, the work on this case. 5 Ms. Blasko is the manager of the case or 6 has been helping out certainly. And Rachael is the 7 analyst and does a lot of the data processing and things 8 like that. 9 Q. Would you be able to tell me who did what 10 substantively with respect to the surveys performed in 11 this case as between those three individuals? 12 A. I think that the description I just gave you 13 is about all I can do. 14 Q. Okay. So the specific tasks and functions 15 associated with developing the survey, doing any 16 pretesting, getting the survey out, getting -- analyzing 17 the responses, you can't give me any more specific 18 information as to these three individuals' roles in those 19 regards other than what you have already testified; is 20 that correct? 21 MR. ARISOHN: I object to form. 22 THE WITNESS: They work collaboratively. 23 And I am working remotely from them, so it's hard to tell 24 exactly what each did.</p>
<p style="text-align: right;">Page 15</p> <p>1 name. 2 Q. And I apologize. Patricia's last name again? 3 A. Yanes, Y-A-N-E-S. 4 Q. And all three of them, Patricia, Carrie and 5 Rachael, they are all with AMS? 6 A. That's correct. 7 Q. What is Patricia's title? 8 A. She is a whatever -- oh, a principal. 9 Q. What's her background? 10 A. She went -- has a master's in business from -- 11 or went to -- well, she attended Boston College as an 12 undergrad. I think she has a master's in business from 13 Bentley. And she has been working there about ten years 14 maybe, awhile. 15 Q. And Carrie Blasko, what is her title? 16 A. She is a, perhaps a senior manager. I'm not 17 sure of her exact title. 18 Q. What's her background? 19 A. Again, a college degree, perhaps a business 20 degree, but I'm not sure what it is. 21 Q. And Rachael, what is her title? 22 A. She is an analyst so as far as I know with a 23 college degree, I'm not sure from where. 24 Q. What were each of their roles with respect to</p>	<p style="text-align: right;">Page 17</p> <p>1 BY MR. SINGER: 2 Q. Anyone else at AMS or any other entity 3 involved in the work that was performed to generate your 4 report and opinion in this case? 5 A. It's possible that, I believe she is the field 6 manager at AMS, Sarah Schomp, S-C-H-O-M-P, may have been 7 involved. 8 Q. You said it's possible. Do you know, as you 9 are sitting here today, whether or not she was? 10 A. She typically is. I didn't speak to her 11 directly, that's why I say that. 12 Q. So I'm not worried about typically or not. As 13 you sit here, you have no knowledge one way or the other 14 whether or not she worked on this? She may have or she 15 may not have; is that right? 16 A. As I said, she generally works on these. I 17 have not spoken to her, that's why I couched my answer; 18 but it's my belief that she did. 19 Q. You are not aware of any work that Ms. Schomp 20 performed specifically in connection with the report that 21 was generated in this case; correct? 22 A. Well, her work would have been to deal with 23 the field suppliers. 24 Q. Mr. Gaskin, I'm not asking what it typically</p>

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<p style="text-align: right;">Page 42</p> <p>1 A. Maybe 30 or so. I'm not sure.</p> <p>2 Q. And have they all been in the context of</p> <p>3 providing conjoint analyses and damages opinions?</p> <p>4 A. I'm not a legal expert, but yes. It's this</p> <p>5 type of case.</p> <p>6 Q. Okay. Let me back up. You have never worked</p> <p>7 at a university; correct?</p> <p>8 A. In terms of having a paid job?</p> <p>9 Q. Yes.</p> <p>10 A. No, I've not.</p> <p>11 Q. Have you ever been retained or engaged by a</p> <p>12 university to conduct a conjoint analysis?</p> <p>13 A. Yes.</p> <p>14 Q. What university was that?</p> <p>15 A. The Massachusetts Institute of Technology or</p> <p>16 MIT.</p> <p>17 Q. When was that?</p> <p>18 A. It's a few years ago.</p> <p>19 Q. Any other universities for which you have been</p> <p>20 engaged to perform a conjoint analysis?</p> <p>21 A. Not that I know of.</p> <p>22 Q. Okay. And what was the -- what were you</p> <p>23 studying in the conjoint that you did for MIT?</p> <p>24 A. We were studying the need for or demand for</p>	<p style="text-align: right;">Page 44</p> <p>1 work I had done with universities for conjoint, that was</p> <p>2 the one.</p> <p>3 Q. I understand.</p> <p>4 MR. ARISOHN: Jon, we are coming up on an</p> <p>5 hour, when you get to a natural breaking spot, can we</p> <p>6 take a short bathroom break?</p> <p>7 MR. SINGER: We can take a break right now</p> <p>8 because we are about to dive in.</p> <p>9 THE VIDEOGRAPHER: The time is 10:28.</p> <p>10 Going off the video record. This concludes Media Unit 1.</p> <p>11 (A brief recess was taken.)</p> <p>12 MR. SINGER: Before we go back on,</p> <p>13 Juliana, would you mind marking the engagement letter and</p> <p>14 AMS invoices as Exhibits 8 and 9.</p> <p>15 (Two documents were marked as Exhibit Nos.</p> <p>16 8 and 9 for identification.)</p> <p>17 THE VIDEOGRAPHER: The time is 10:50. We</p> <p>18 are back on the video record. This begins Media Unit 2.</p> <p>19 BY MR. SINGER:</p> <p>20 Q. Mr. Gaskin, could you please pull up the</p> <p>21 engagement letter we received during the break that's</p> <p>22 marked as Exhibit 8.</p> <p>23 A. Yes.</p> <p>24 Q. Let me know when you have it in front of you.</p>
<p style="text-align: right;">Page 43</p> <p>1 grad student housing.</p> <p>2 Q. Was that in the context of litigation?</p> <p>3 A. No, it was not.</p> <p>4 Q. And did you perform the same type of conjoint</p> <p>5 analysis for MIT as you did in this case or did you use</p> <p>6 different methods?</p> <p>7 A. It was the same methods.</p> <p>8 Q. What was it specifically that you were looking</p> <p>9 at in terms of the demand for grad student housing? Can</p> <p>10 you be more specific?</p> <p>11 A. I think how much grad student housing they</p> <p>12 needed.</p> <p>13 Q. In terms of quantity of, like, available</p> <p>14 housing?</p> <p>15 A. Quantity and pricing.</p> <p>16 Q. You were not studying tuition in that</p> <p>17 engagement; correct?</p> <p>18 A. That's correct. I was not asked to.</p> <p>19 Q. Okay. And before your engagement -- before</p> <p>20 being engaged to conduct conjoints in these higher ed</p> <p>21 tuition and fee class actions, you had never performed a</p> <p>22 conjoint to determine pricing for university tuition;</p> <p>23 correct?</p> <p>24 A. Yes. I mean, you asked me if I'd ever -- what</p>	<p style="text-align: right;">Page 45</p> <p>1 A. All right. I have it in front of me.</p> <p>2 Q. In the first paragraph you state in your</p> <p>3 engagement letter that "AMS will send you a separate</p> <p>4 engagement letter, and will bill you separately."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Just to be clear, you do not have a copy of</p> <p>8 that engagement letter from AMS; correct?</p> <p>9 A. That's correct.</p> <p>10 Q. And is it your understanding that AMS's</p> <p>11 engagement with the plaintiffs is separate and distinct</p> <p>12 from your engagement with the plaintiffs?</p> <p>13 A. Well, I said they will send you a separate</p> <p>14 engagement letter, isn't that what it means?</p> <p>15 Q. Thank you.</p> <p>16 And you state down in paragraph 4 of this</p> <p>17 engagement letter, "I will take all necessary measures to</p> <p>18 ensure that my communications with you remain privileged</p> <p>19 and are not disclosed to third parties (other than AMS or</p> <p>20 other experts working on this matter, as appropriate and</p> <p>21 authorized by you)."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Mr. Weir is one of those third parties working</p>

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<p style="text-align: right;">Page 50</p> <p>1 put this on the record now. I have serious concerns 2 about the witness's responsiveness and obstructionist 3 tactics during this deposition. The record is what the 4 record is. I see you shaking your head but, nonetheless, 5 I am putting it on notice right now that if this 6 continues, we will be filing a motion with the Court, 7 because we are not going to be deprived of our time to 8 depose Mr. Gaskin based on his delay and obstruction. 9 MR. ARISOHN: Okay. I don't know what the 10 point of saying that on the record is. You can file 11 whatever you want to file, I guess. I can't stop you. 12 MR. SINGER: That's right. 13 MR. ARISOHN: If you want better answers, 14 I guess ask better questions. 15 MR. SINGER: The point of putting it on 16 the record is because now is your opportunity to talk 17 with him on a break and tell him to answer the questions. 18 If you choose not to do so, that's at your risk. 19 THE WITNESS: All right. So I looked at 20 those invoices. There appear to be, I would say, at 21 least 100 hours on there; I didn't add each number up. 22 BY MR. SINGER: 23 Q. Okay. So at a minimum, based on your 24 estimation right there, AMS has spent over five times the</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Well, we do work together, but there's no 2 official legal affiliation. 3 Q. Thank you. 4 Are all of the higher education tuition or 5 fee class actions in which you have been engaged as an 6 expert witness identified on your C.V. marked as Exhibit 7 A? 8 A. I believe so. At least the ones for which I 9 have submitted some sort of opinions. 10 Q. Do you know whether any Daubert motions have 11 been filed against you or your reports in any of the 12 higher ed tuition fee reimbursement cases in which you 13 have been retained as an expert? 14 A. Well, I'm not a legal expert, but my reports 15 have all been challenged, if that's what you mean. 16 Q. You are familiar with the Daubert standard in 17 federal court? 18 A. Yes. 19 MR. ARISOHN: Objection. Hold on. Calls 20 for a legal conclusion. 21 THE WITNESS: Again, you know, there's -- 22 BY MR. SINGER: 23 Q. Mr. Gaskin, did you answer yes? I think you 24 said yes; correct?</p>
<p style="text-align: right;">Page 51</p> <p>1 amount of time on this engagement, on the work that went 2 into your report, than you did; correct? 3 A. I think your mathematics is wrong. If I put 4 in about -- wait. If I put in about 16 and they put in 5 over 100, that would be six times, I think. 6 Q. Even better. Thank you. 7 Do you know whether AMS was a disclosed 8 expert witness in this case, Mr. Gaskin? 9 A. Not to my knowledge. 10 Q. Okay. Do you receive any payments from AMS 11 for the work that AMS is billing plaintiffs in this case? 12 A. No, I do not. 13 Q. Do you hold any equity interest in AMS? 14 A. No, I do not. 15 Q. Are you completely separate from AMS? 16 A. How do you define separate? 17 Q. How do you understand separate? 18 A. Well, I don't work for them. I live in a 19 different place. I don't know exactly what you mean. 20 Q. You don't share in any revenues or profits 21 from AMS; correct? 22 A. That's correct. 23 Q. And there is no affiliation between Steven 24 Gaskin, LLC and AMS; correct?</p>	<p style="text-align: right;">Page 53</p> <p>1 A. I believe I was just talking and you 2 interrupted me. Would you like me to finish my answer? 3 Q. I believe your counsel interrupted you 4 actually, but go ahead. 5 A. No, you interrupted me. 6 I've heard of Daubert and Pomcast (sic). 7 It's my belief that it's Daubert. But, again, I'm not a 8 legal expert. I do know that rebuttal reports were filed 9 and that I had to respond to them, and then some sort of 10 ruling was made about class certification. 11 Q. I'm not asking about class certification. I'm 12 asking about Daubert motions on the reliability or 13 methodology of conjoint analyses that you have done in 14 the higher ed tuition and fee reimbursement cases. 15 With that context, are you aware of any 16 such motions being filed against you? 17 MR. ARISOHN: Objection. Calls for a 18 legal conclusion. You can answer the question. 19 THE WITNESS: I just answered your 20 question. 21 BY MR. SINGER: 22 Q. Mr. Gaskin, you did not. I'm asking the 23 question again and I need an answer. Okay? 24 In the context of your engagements in</p>

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<p style="text-align: right;">Page 78</p> <p>1 in your report?</p> <p>2 A. It's my recollection that I talked about a</p> <p>3 reduction in market value. I don't recall explicitly an</p> <p>4 overpayment factor. You can show me, if you'd like.</p> <p>5 Q. You are not expressing an opinion on any</p> <p>6 alleged damages for missed classes during the days that</p> <p>7 the university was closed; correct?</p> <p>8 A. Well, I think that that would -- is more of a</p> <p>9 legal question. I have presented two scenarios to</p> <p>10 students and asked them to get the difference. And I am</p> <p>11 estimating the difference in market value based on that.</p> <p>12 Q. Yes. And you have told me that that was at</p> <p>13 the time and point of sale at the beginning of the</p> <p>14 semester; correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So now I am asking you about something</p> <p>17 that occurred during the semester when the university</p> <p>18 closed for several days. You are not expressing an</p> <p>19 opinion on any alleged damages for missed classes during</p> <p>20 those days; correct?</p> <p>21 A. I really think that's out of the scope of my</p> <p>22 assignment. I provided two scenarios, and evaluated a</p> <p>23 difference in market value between each of them. It</p> <p>24 involves the closure of the school, but I think you'd do</p>	<p style="text-align: right;">Page 80</p> <p>1 asking you to wait until everyone gets there. That's the</p> <p>2 way that every deposition I have ever been in has been</p> <p>3 conducted. Really, if you are unable to, you know,</p> <p>4 proceed with that sort of courtesy, that's really a</p> <p>5 shame.</p> <p>6 MR. SINGER: No. If you need to get</p> <p>7 there, that's fine, say so. The witness is fine. I am</p> <p>8 reading the questions. We are good.</p> <p>9 MR. ARISOHN: I needed to get there.</p> <p>10 MR. SINGER: The witness didn't have an</p> <p>11 issue.</p> <p>12 MR. ARISOHN: I needed to get there as</p> <p>13 well.</p> <p>14 MR. SINGER: Thank you.</p> <p>15 MR. ARISOHN: If you are pointing us --</p> <p>16 the witness or anyone else to a specific portion of a</p> <p>17 document, would you just make sure that everybody is</p> <p>18 there, or wait a second for everyone to get there.</p> <p>19 BY MR. SINGER:</p> <p>20 Q. Mr. Gaskin, in paragraph 10 of your report,</p> <p>21 you state, "I was asked by counsel for Plaintiffs to</p> <p>22 design, describe, and execute a market research survey</p> <p>23 (the 'University Survey') and to conduct an analysis that</p> <p>24 would enable me to assess" "the reduction, if any, in</p>
<p style="text-align: right;">Page 79</p> <p>1 better to ask Mr. Weir or counsel.</p> <p>2 Q. Thank you.</p> <p>3 You are not expressing an opinion as to</p> <p>4 whether or not the university was unjustly enriched in</p> <p>5 any amount; correct?</p> <p>6 A. It's my job to assume that plaintiffs'</p> <p>7 allegations are true and that they will be found to be</p> <p>8 true during this stage of the trial. However, I'm not an</p> <p>9 expert in that area or do I vouch personally for those</p> <p>10 allegations.</p> <p>11 Q. You have not reviewed the university's</p> <p>12 financials from the spring of 2020; correct?</p> <p>13 A. Not to my knowledge, nor did I need to do</p> <p>14 my assignment.</p> <p>15 Q. Look at paragraph 10 in your report, please.</p> <p>16 A. Okay.</p> <p>17 MR. ARISOHN: Hold on. Can you just wait</p> <p>18 until the witness gets there before you ask your</p> <p>19 question. Is that okay?</p> <p>20 MR. SINGER: I can read it. Josh, if he</p> <p>21 has an issue, he'll tell me, okay. He is fine.</p> <p>22 MR. ARISOHN: For the sake of me and the</p> <p>23 witness and everyone following along, when you are</p> <p>24 pointing to a specific paragraph of an exhibit, I am just</p>	<p style="text-align: right;">Page 81</p> <p>1 market value resulting from the Closure of the University</p> <p>2 Campus (measured in dollars and/or percentage terms.)"</p> <p>3 Do you see that?</p> <p>4 A. I do. And I had not gotten there when you</p> <p>5 started reading it before, so I would appreciate your</p> <p>6 waiting for me to say I'm there.</p> <p>7 Q. Okay. That paragraph summarizes the scope of</p> <p>8 the university's survey and your assignment; correct?</p> <p>9 A. I will just review it once more. (Witness</p> <p>10 reading.) Yes, that does.</p> <p>11 Q. And the market value reduction that you were</p> <p>12 calculating, results from that defined -- you assume</p> <p>13 results from that defined term, closure of the university</p> <p>14 campus, that we looked at in paragraph 8; right?</p> <p>15 A. Well, basically. But I think if you read</p> <p>16 through the report more thoroughly you will see the</p> <p>17 definition of the levels I used for campus, class and</p> <p>18 campus format, and that's what they're really reacting</p> <p>19 to, that definition of the two levels used in the</p> <p>20 conjoint survey.</p> <p>21 Q. You used choice-based conjoint as your</p> <p>22 methodology; is that right?</p> <p>23 A. That is correct.</p> <p>24 Q. And there are other conjoint types that you</p>

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<p style="text-align: right;">Page 82</p> <p>1 could have used as well; correct?</p> <p>2 A. Yes, but this is, choice-based conjoint is</p> <p>3 regarded as the gold standard for this sort of thing.</p> <p>4 It's the most highly regarded.</p> <p>5 Q. Okay. And would you ever consider using menu</p> <p>6 based, full profile, two attribute tradeoff, adaptive</p> <p>7 self-application or Max differential, any of those</p> <p>8 instead of choice based?</p> <p>9 MR. ARISOHN: I object to form, compound</p> <p>10 question.</p> <p>11 THE WITNESS: One of the terms you used is</p> <p>12 incorrect, by the way.</p> <p>13 BY MR. SINGER:</p> <p>14 Q. Which term?</p> <p>15 A. Perhaps you would like to ask it again. Max</p> <p>16 differential.</p> <p>17 Q. Yeah, Max differential.</p> <p>18 A. Yes, I said it's incorrect.</p> <p>19 Q. What should it be?</p> <p>20 A. MaxDiff.</p> <p>21 Q. MaxDiff. Okay. I have written down MaxDiff</p> <p>22 actually, believe it or not.</p> <p>23 Would you ever use any of those conjoint</p> <p>24 types over choice based in this setting?</p>	<p style="text-align: right;">Page 84</p> <p>1 I think I may have heard that that occurs in another</p> <p>2 case, from the opposing expert, but I can't say that</p> <p>3 personally I'm aware of it.</p> <p>4 Q. And you never interviewed anybody at the</p> <p>5 University of Delaware in connection with your work;</p> <p>6 correct?</p> <p>7 A. Do you mean people that work for the</p> <p>8 University of Delaware or were walking on the campus or</p> <p>9 what?</p> <p>10 Q. I mean people that worked at the university,</p> <p>11 sir.</p> <p>12 A. No, I have not.</p> <p>13 Q. You never interviewed -- you never read any</p> <p>14 deposition transcripts from any of the University Of</p> <p>15 Delaware witnesses that were deposed in this case;</p> <p>16 correct?</p> <p>17 A. No, I have not nor was I asked to.</p> <p>18 Q. So you are unaware of how the university</p> <p>19 actually sets its tuition pricing; correct?</p> <p>20 A. Again, that's out of the scope of my</p> <p>21 assignment. I am asking students about the change in</p> <p>22 market value according to them.</p> <p>23 Q. Right. So you are focused only on the demand</p> <p>24 side, the supply side is outside the scope of your</p>
<p style="text-align: right;">Page 83</p> <p>1 A. Well, there's more than one way to skin a cat,</p> <p>2 but as I have said, choice-based conjoint is held to be</p> <p>3 the gold standard for this sort of thing, and it's the</p> <p>4 most widely -- most highly regarded methodology for this.</p> <p>5 So that's why I am using it.</p> <p>6 Q. Just to be clear. When you reference at the</p> <p>7 time and point of sale, I think you said, you are talking</p> <p>8 at about what time specifically?</p> <p>9 A. It's when students commit to pay the tuition</p> <p>10 for that semester.</p> <p>11 Q. When does that occur at UD?</p> <p>12 A. It's my belief that it occurs at the start of</p> <p>13 the semester, but it's either that or the start of the</p> <p>14 year or the start of the semester.</p> <p>15 Q. Do you need to know that in order to conduct</p> <p>16 this analysis?</p> <p>17 A. I just need to know that it's prior to the</p> <p>18 start of the spring 2020 semester.</p> <p>19 Q. Do you know the -- have you done any research</p> <p>20 into the prevalence of conjoint analysis usage in the</p> <p>21 context of setting tuition in the higher education</p> <p>22 industry?</p> <p>23 A. I have read a number of papers regarding</p> <p>24 school choice. I don't recall any about setting tuition.</p>	<p style="text-align: right;">Page 85</p> <p>1 engagement; is that correct?</p> <p>2 MR. ARISOHN: Objection. Misstates the</p> <p>3 witness's prior testimony.</p> <p>4 THE WITNESS: You have mischaracterized my</p> <p>5 opinions and testimony. As I state in, I think it's</p> <p>6 paragraph 22 of my report, I do account for supply-side</p> <p>7 factors in my analysis. And so it's not just the demand-</p> <p>8 side analysis.</p> <p>9 BY MR. SINGER:</p> <p>10 Q. Well, wouldn't the university's method of</p> <p>11 setting pricing and how it goes about setting pricing be</p> <p>12 relevant to the supply side?</p> <p>13 A. It could be, but it's reflected in the price</p> <p>14 range that I've used in the survey. And this sort of</p> <p>15 economic question is really is out of -- is better</p> <p>16 directed to Mr. Weir from whom I have learned any sort of</p> <p>17 economic supply-side questions.</p> <p>18 Q. Your work has been focused on what students</p> <p>19 perceive, not on how universities actually set pricing;</p> <p>20 right?</p> <p>21 A. Again, you have mischaracterized my testimony.</p> <p>22 While conjoint does work with the demand side by</p> <p>23 appropriately marrying it with supply side</p> <p>24 considerations, I can give a change in market value,</p>

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<p>1 MR. ARISOHN: You have been screaming at</p> <p>2 the witness all morning, and laughing.</p> <p>3 MR. SINGER: This is a waste of time.</p> <p>4 This is a waste of time.</p> <p>5 MR. ARISOHN: I agree with that.</p> <p>6 MR. SINGER: Let's proceed.</p> <p>7 BY MR. SINGER:</p> <p>8 Q. Mr. Gaskin, can you explain -- are you aware</p> <p>9 of whether or not any universities use Sawtooth Software?</p> <p>10 A. Yes.</p> <p>11 Q. Beyond the MIT experience you had?</p> <p>12 A. Well, they wouldn't necessarily use Sawtooth</p> <p>13 Software when I conduct a conjoint for them, but they do</p> <p>14 use it. And it's, from -- it's my understanding from</p> <p>15 research papers I have read and conference talks that are</p> <p>16 given by university professors that many of them do use</p> <p>17 Sawtooth Software. It's the leading conjoint analysis</p> <p>18 software.</p> <p>19 Q. Can you explain the Hierarchical Bayes</p> <p>20 regression analysis?</p> <p>21 A. Well, there's books for that, so it could be a</p> <p>22 very long explanation. But briefly, what it does is take</p> <p>23 the information in the choice tasks, in other words,</p> <p>24 which -- the characteristics of the products respondents</p>	<p>1 each attribute, for each level.</p> <p>2 Q. You mentioned earlier that universities use</p> <p>3 conjoint, and it sounded like you were discussing</p> <p>4 professors.</p> <p>5 Are you aware of financial services or</p> <p>6 accounting offices or administrative offices at</p> <p>7 universities that actually use conjoint?</p> <p>8 A. I'm not. But, in my experience, if the</p> <p>9 university were going to do it for their financial</p> <p>10 people, they would hire someone who knows about conjoint</p> <p>11 analysis. That's way out of the job description of</p> <p>12 people in those offices generally.</p> <p>13 Q. Right. And my question was whether you were</p> <p>14 aware of universities that hired people outside of those</p> <p>15 offices for that purpose?</p> <p>16 A. Oh, I don't think that was your question, but</p> <p>17 I don't know if they have or not.</p> <p>18 Q. Thank you.</p> <p>19 Does your conjoint assume that attributes</p> <p>20 interact with one another?</p> <p>21 A. I checked for that as part of my analysis, and</p> <p>22 empirically here I have seen that they do not.</p> <p>23 Q. How did you check for it?</p> <p>24 A. There's a Sawtooth program called Model</p>
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<p>1 chose from, their choices, and it, from there it comes up</p> <p>2 with a set of what are called partworths, which help</p> <p>3 characterize how each level of each attribute drives</p> <p>4 consumer choices. And that's the chief benefit or novel</p> <p>5 benefit of Hierarchical Bayes choice models which have</p> <p>6 been around now or used in Sawtooth Software since about</p> <p>7 1999 or 2000, if I am correct.</p> <p>8 They provide partworths at the individual</p> <p>9 level. Whereas, a standard Logit model, which was the</p> <p>10 previous sort of mechanism, provides it just at the</p> <p>11 aggregate level. And the way the Hierarchical Bayes</p> <p>12 model works is that it can work off of a lot -- a very</p> <p>13 small set of data. That's its chief -- another chief</p> <p>14 virtue.</p> <p>15 And there's no formula for solving the</p> <p>16 equation that it's trying to solve. So what it does is</p> <p>17 it uses conditional probability distributions and samples</p> <p>18 from them successfully, something called a Monte Carlo</p> <p>19 mark-off process that gradually converges on an answer</p> <p>20 after many, many draws, perhaps 10,000. And then it</p> <p>21 continues that process of narrowing in on the answer for</p> <p>22 another 10,000 or so. It's up to the user, and whether</p> <p>23 the results are stable at that point of the first 10,000,</p> <p>24 to get an estimate of the partworths for each person, for</p>	<p>1 Explorer, and it does two things. It helps us determine</p> <p>2 the prior variance and prior degrees of freedom to use in</p> <p>3 the Hierarchical Bayes choice model, and then given that,</p> <p>4 it checks for interactions. And so I have done that and</p> <p>5 found no interactions.</p> <p>6 Q. Do you have -- is there data that reflects</p> <p>7 that work that was done?</p> <p>8 A. There is -- there are the results, which are</p> <p>9 presented in my exhibits, of what the prior degrees of</p> <p>10 freedom and prior variance are. And it was discussed in</p> <p>11 that exhibit, I believe, that we used Model Explorer to</p> <p>12 do so.</p> <p>13 Q. Which exhibit?</p> <p>14 A. One of the ones at the very end, I think.</p> <p>15 Q. Is that Exhibit J: Model Fit and Holdout</p> <p>16 Diagnostics?</p> <p>17 A. No.</p> <p>18 Q. Can you tell me which exhibit?</p> <p>19 A. I'm trying to get to the end of my report. I</p> <p>20 think it would be in Exhibit O, the CBC/HB settings.</p> <p>21 Q. Okay. Does decision theory underlie conjoint</p> <p>22 analyses?</p> <p>23 A. I think so, because Paul Green and Vithala</p> <p>24 Rao, who wrote that seminal paper on conjoint analysis</p>

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<p style="text-align: right;">Page 126</p> <p>1 right?</p> <p>2 A. Depending on how you describe it, I'm not sure</p> <p>3 if you could or not.</p> <p>4 Q. You could have included sports programming;</p> <p>5 correct?</p> <p>6 A. Again, that's rather vague. I'd have to think</p> <p>7 about it more. Possibly.</p> <p>8 Q. People choose universities sometimes because</p> <p>9 they are fans of the sports teams; right? That could</p> <p>10 have been an attribute that you included; correct?</p> <p>11 A. Perhaps. I'm an MIT student, so I'm not</p> <p>12 holding myself out as an expert in college sports.</p> <p>13 Q. You could have included geographic proximity</p> <p>14 to their home; correct?</p> <p>15 A. I believe I did. In the university attribute</p> <p>16 it shows the location of the campus, so they can make</p> <p>17 their own conclusions from that.</p> <p>18 Q. So you believe that would incorporate that?</p> <p>19 A. Sure. If you tell people it's in Delaware,</p> <p>20 and they live in Pennsylvania, then they know it's closer</p> <p>21 than someone reviewing it from California.</p> <p>22 Q. There are a number of reasons why students</p> <p>23 choose to attend a university that were not part of the</p> <p>24 attribute list you selected; correct?</p>	<p style="text-align: right;">Page 128</p> <p>1 Why these to the exclusion of the others you considered?</p> <p>2 A. Like I said, I can't remember the others I</p> <p>3 considered, so it's hard to tell you why I chose these</p> <p>4 versus them.</p> <p>5 Q. Do you agree that conjoint analyses do not</p> <p>6 provide accurate results if the surveyor does not</p> <p>7 properly identify the entire set of competitive choices</p> <p>8 and product characteristics that consumers consider when</p> <p>9 making purchase decisions?</p> <p>10 A. Well, it depends on the application. That's</p> <p>11 much more helpful in the new product development</p> <p>12 application. In a class action conjoint, it's not so</p> <p>13 critical.</p> <p>14 Q. Why is that?</p> <p>15 A. Well, I have explained it to you. I could do</p> <p>16 it again, if you'd like.</p> <p>17 Q. My follow-up question asks you to explain it.</p> <p>18 Thank you.</p> <p>19 A. You are welcome.</p> <p>20 In a class action conjoint, in the</p> <p>21 simulation, there's two products that vary only on the</p> <p>22 key attribute levels and price. All of the other</p> <p>23 attribute levels are held constant and the same across</p> <p>24 the two alternatives, so they have no affect on the</p>
<p style="text-align: right;">Page 127</p> <p>1 A. What evidence are you presenting for that?</p> <p>2 Q. I am just asking you a question, sir. Yes or</p> <p>3 no?</p> <p>4 A. I'm not sure what you are referring to.</p> <p>5 Q. Are there reasons that students choose</p> <p>6 universities other than the attributes you listed in your</p> <p>7 survey?</p> <p>8 A. There could be. But again, it doesn't matter</p> <p>9 due to the nature of how a class action conjoint uses the</p> <p>10 attributes.</p> <p>11 Q. And it matters not because why?</p> <p>12 A. I have already explained it to you. If you</p> <p>13 would like to go to that paragraph, I can read it to you.</p> <p>14 Q. Which paragraph?</p> <p>15 A. I will find it. Just a moment. Paragraph 24.</p> <p>16 Q. How is it that you selected these attributes</p> <p>17 to the exclusion of others?</p> <p>18 A. Well, I gave you my methodology right there.</p> <p>19 It's basically the choice of attributes is both an art</p> <p>20 and a science. So it's hard to give a computer formula</p> <p>21 for it. But, in my judgment, I had the best set of</p> <p>22 attributes among the ones I considered.</p> <p>23 Q. And that's what I am trying to pin down. The</p> <p>24 ones you considered, you cut some and you chose these.</p>	<p style="text-align: right;">Page 129</p> <p>1 calculation.</p> <p>2 So in that sense they don't matter. In</p> <p>3 addition, the way conjoints are designed, the partworths</p> <p>4 value is achieved or estimated between any pair of</p> <p>5 attributes are generally independent of all the other</p> <p>6 attributes. And there's academic literature to that</p> <p>7 regard that states that the exact choice of attributes or</p> <p>8 inclusion or exclusion of an attribute doesn't affect</p> <p>9 that sort of relative relationship between my key</p> <p>10 attribute and price.</p> <p>11 So for those reasons, I think it matters</p> <p>12 less in a class action conjoint.</p> <p>13 Q. Are there any academic publications on class</p> <p>14 action conjoints?</p> <p>15 A. Class action conjoints are mentioned, at the</p> <p>16 very least, in the book "Applied Conjoint Analysis" by</p> <p>17 Vithala Rao. He was one of the coauthors of a seminal</p> <p>18 academic paper on conjoint analysis.</p> <p>19 Q. Do you agree that profiles presented in</p> <p>20 conjoint analysis should be believable and should</p> <p>21 resemble existing products as much as possible?</p> <p>22 A. I think that quote is cherry-picked from a</p> <p>23 longer passage that I often read. So perhaps if I can't</p> <p>24 see the rest of that passage, I think I would rather</p>

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<p style="text-align: right;">Page 134</p> <p>1 Q. Okay. If the damage occurs at that point in</p> <p>2 time, should you or Mr. Weir be factoring in offsets or</p> <p>3 credits that occur after that point in time against the</p> <p>4 damages that you say occurred earlier?</p> <p>5 MR. ARISOHN: I object to form.</p> <p>6 THE WITNESS: Well, I will leave</p> <p>7 Mr. Weir's calculations and the need for that to him,</p> <p>8 because I'm not the economics expert. My -- and I'm not</p> <p>9 a legal expert, either. But my understanding is that I</p> <p>10 don't need to do that.</p> <p>11 BY MR. SINGER:</p> <p>12 Q. How could a consumer be damaged at the time</p> <p>13 and point of sale as you calculate it when nothing had</p> <p>14 happened at that point in time?</p> <p>15 MR. ARISOHN: Objection. Calls for a</p> <p>16 legal conclusion.</p> <p>17 THE WITNESS: That's really not a conjoint</p> <p>18 analysis market research survey question. It really is</p> <p>19 kind of a legal question. It's my understanding that at</p> <p>20 that very point they didn't get the benefit of their</p> <p>21 bargain.</p> <p>22 BY MR. SINGER:</p> <p>23 Q. But they did at that point in terms of going</p> <p>24 to online -- I mean, going to in-person classes and</p>	<p style="text-align: right;">Page 136</p> <p>1 Q. Did you do any work to determine what</p> <p>2 attributes Delaware believes are important to its student</p> <p>3 population?</p> <p>4 A. Delaware is a state, right? I don't know how</p> <p>5 a state would believe anything like that.</p> <p>6 Q. Mr. Gaskin, you know you are testifying</p> <p>7 against the University of Delaware. Okay? So I</p> <p>8 appreciate the nuance you are trying to point out, but</p> <p>9 please just answer the question.</p> <p>10 A. I am just listening to your questions and</p> <p>11 answering them, I'm sorry. The question seemed vague to</p> <p>12 me.</p> <p>13 I have looked at university websites,</p> <p>14 including University of Delaware, to develop my set of</p> <p>15 attributes and levels. So in that sense, yes.</p> <p>16 Q. Do you agree that the important attributes to</p> <p>17 individual students vary by student?</p> <p>18 A. That's quite possible. And it's allowed and</p> <p>19 accounted for in my survey and model and analysis.</p> <p>20 Q. Did plaintiffs' counsel participate in the</p> <p>21 process of determining the attributes that you would use</p> <p>22 for the survey?</p> <p>23 A. I believe that -- we could go back and review</p> <p>24 those paragraphs that show the sources. My belief is</p>
<p style="text-align: right;">Page 135</p> <p>1 living on campus for the beginning part of the semester;</p> <p>2 correct?</p> <p>3 A. Perhaps.</p> <p>4 MR. ARISOHN: Objection. Go ahead.</p> <p>5 THE WITNESS: Sorry. The bargain covered</p> <p>6 the entire semester.</p> <p>7 BY MR. SINGER:</p> <p>8 Q. Did you do pretesting to identify relevant</p> <p>9 attributes?</p> <p>10 A. Well, actually a pretest is, as I understand</p> <p>11 it, is not designed to do that.</p> <p>12 Q. Did you use the pretest at all in connection</p> <p>13 with determining the attributes that you would use?</p> <p>14 A. The attributes had already been determined at</p> <p>15 that point. I could have changed them or altered them if</p> <p>16 one turned out to be inappropriate, but I didn't find</p> <p>17 that.</p> <p>18 Q. Could you have done pretesting to identify the</p> <p>19 most appropriate attributes for use in the conjoint?</p> <p>20 A. Well, it would be awkward, as I said, because</p> <p>21 the conjoint is actually already made at that point. I</p> <p>22 mean, you can check that they are good ones, but you</p> <p>23 shouldn't start from ground zero then because a conjoint</p> <p>24 has to be already built.</p>	<p style="text-align: right;">Page 137</p> <p>1 that they were involved mainly with the key attribute,</p> <p>2 class and campus format, and they were involved in the</p> <p>3 tuition discussions.</p> <p>4 Q. Do you recall any specific attributes that</p> <p>5 plaintiffs' counsel indicated should be included or</p> <p>6 should not be included?</p> <p>7 A. Well, certainly they wanted the class and</p> <p>8 campus format and price or else we wouldn't have been</p> <p>9 able to do the -- give them an answer that they wished</p> <p>10 for. As for the others, I don't think they made any</p> <p>11 specific recommendations.</p> <p>12 Q. Do you agree that missing attributes can be a</p> <p>13 real problem?</p> <p>14 A. It --</p> <p>15 MR. ARISOHN: Objection, vague.</p> <p>16 THE WITNESS: Sorry. Sorry, Josh.</p> <p>17 It depends on the context in which the</p> <p>18 conjoint is used. If it's a new product development or</p> <p>19 patent infringement conjoint, it's perhaps a problem,</p> <p>20 but -- and could be, but in a class action conjoint, it's</p> <p>21 much less so.</p> <p>22 BY MR. SINGER:</p> <p>23 Q. But even in a class action conjoint, it could</p> <p>24 be a problem; correct?</p>

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<p style="text-align: right;">Page 138</p> <p>1 A. No. I think I have explained to you why it's</p> <p>2 not a problem, how the other attributes other than the</p> <p>3 key attribute and price serve chiefly as distractors, and</p> <p>4 to make the conjoint a more reasonable and engaging task,</p> <p>5 if I am remembering what I said.</p> <p>6 Q. So would it be of any benefit to you to have</p> <p>7 reviewed the plaintiffs' depositions and determined the</p> <p>8 attributes that mattered to them in making their decision</p> <p>9 to attend UD as part of your work to determine the</p> <p>10 appropriate attributes for use in your survey?</p> <p>11 A. I'm always happy to review new information,</p> <p>12 but for the reasons I have discussed, I think that it</p> <p>13 would not have been critical to the development of my</p> <p>14 list of attributes.</p> <p>15 Q. Do you know whether any of the four plaintiffs</p> <p>16 in this case identified any of these attributes that you</p> <p>17 used among the list of reasons that they chose to attend</p> <p>18 University of Delaware?</p> <p>19 A. I believe that the in-person courses were</p> <p>20 important, but I haven't reviewed their depositions, so</p> <p>21 it's hard for me to say. Again, I don't think it's</p> <p>22 necessary for my purposes, given the nature of the class</p> <p>23 action conjoint, how attributes are selected.</p> <p>24 Q. Do you agree that conjoint analysis</p>	<p style="text-align: right;">Page 140</p> <p>1 determine the reduction in market price for tuition in</p> <p>2 the spring of 2020 in a non-litigation setting?</p> <p>3 A. I think that if it were -- for that question</p> <p>4 in itself, which is my sort, the class action sort of</p> <p>5 question, I don't think it would be different. But a new</p> <p>6 product development conjoint -- maybe not always, but</p> <p>7 when it does try to give a numerical answer is going</p> <p>8 after different -- measures of different things. And</p> <p>9 that's where the choice of attributes comes in a little</p> <p>10 handier.</p> <p>11 Q. You don't structure or perform a conjoint</p> <p>12 differently because you are doing it in a setting of a</p> <p>13 class action lawsuit as a retained expert than if you</p> <p>14 were to do it outside a class action context; correct?</p> <p>15 A. I think you have mischaracterized my</p> <p>16 testimony. I said if you are trying to calculate the</p> <p>17 exact same thing, then it would be the same analysis, but</p> <p>18 if you are trying to calculate something else, like what</p> <p>19 feature might give rise to the most profits for the</p> <p>20 company or something like that, that's a different sort</p> <p>21 of analysis and has different requirements.</p> <p>22 Q. Right. So when you are saying you don't need</p> <p>23 to do something in a class action conjoint, there's</p> <p>24 nothing unique about a class action that means you don't</p>
<p style="text-align: right;">Page 139</p> <p>1 predictions assume that all relevant attributes that</p> <p>2 influence that share at issue have been measured?</p> <p>3 MR. ARISOHN: I object to form.</p> <p>4 THE WITNESS: Well, what -- did you say,</p> <p>5 calculations? There's a lot of calculations.</p> <p>6 BY MR. SINGER:</p> <p>7 Q. No. I said do you agree that conjoint</p> <p>8 analysis predictions assume that all relevant attributes</p> <p>9 that influence that share have been measured?</p> <p>10 MR. ARISOHN: The same objection.</p> <p>11 THE WITNESS: Again, conjoint is used for</p> <p>12 many of -- a wide variety of uses. In some cases that I</p> <p>13 have mentioned, such as new product development, that's</p> <p>14 very helpful. But in a class action conjoint, it's not</p> <p>15 so helpful.</p> <p>16 BY MR. SINGER:</p> <p>17 Q. And when you use the term class action</p> <p>18 conjoint, what does that term mean when you are using it?</p> <p>19 A. It means a conjoint analysis for a class</p> <p>20 action litigation.</p> <p>21 Q. Okay. Is a conjoint analysis for a class</p> <p>22 action litigation like you have done in this case any</p> <p>23 different from what you would do in terms of a conjoint</p> <p>24 analysis if the University of Delaware hired you to</p>	<p style="text-align: right;">Page 141</p> <p>1 need to do something in the methodology of the conjoint</p> <p>2 as distinct as measuring the same thing in a non-class</p> <p>3 action setting for business reasons, for example?</p> <p>4 A. If my goal is to estimate the exact same</p> <p>5 quantity, price premium or reduction in market value,</p> <p>6 then -- and I have done that in both business and</p> <p>7 litigation worlds, to me the methodologies are very</p> <p>8 similar.</p> <p>9 Q. Thank you.</p> <p>10 Have you heard of the concept called</p> <p>11 omitted variable bias?</p> <p>12 A. Yes. Something to that effect.</p> <p>13 Q. And what is that?</p> <p>14 A. Well, in a regression analysis, for example,</p> <p>15 if you are leaving out a variable, it may not be able to</p> <p>16 explain the -- the model may not be able to explain all</p> <p>17 that it could otherwise, depending on the application.</p> <p>18 Q. Does ignoring relevant attributes cause</p> <p>19 omitted variable bias?</p> <p>20 A. Well, I have already answered this question,</p> <p>21 but I will answer again for you, if you'd like. It</p> <p>22 depends on the application. In new product development,</p> <p>23 where you are trying to model the -- if you are going a</p> <p>24 certain quantitative route to calculate sales and profits</p>

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<p>1 Q. Are you aware of any basis for Mr. Weir's</p> <p>2 overpayment factor other than the conjoint that you</p> <p>3 performed that yielded your opinion that there's a 15.2</p> <p>4 percent market value reduction?</p> <p>5 A. Well, again, it's not the only number going in</p> <p>6 there. I believe that my reduction in market value is an</p> <p>7 input into his model.</p> <p>8 Q. Right. My question was: Are you aware of any</p> <p>9 other input that he used for overpayment factor other</p> <p>10 than your 15.2 percent?</p> <p>11 A. No, I'm not.</p> <p>12 Q. Can you describe what customer segmentation</p> <p>13 is?</p> <p>14 A. It's -- in my view, it's a market research</p> <p>15 term in which consumers are grouped based on demographics</p> <p>16 or preferences or behavior or some combination of the</p> <p>17 three. And then analyses are done within each segment,</p> <p>18 and the segments are compared.</p> <p>19 Q. And how does segmentation affect the conjoint</p> <p>20 analysis that you performed?</p> <p>21 A. Well, given that there's just one tuition list</p> <p>22 price for everyone, I don't think it does.</p> <p>23 Q. What is the marketplace that you used in your</p> <p>24 study?</p>	<p>1 errors are washed out and those individual partworths are</p> <p>2 quite useful for getting an estimate for a group of</p> <p>3 people. That's what I mean by more aggregate level. It</p> <p>4 could be the total sample. It could be individual</p> <p>5 groups.</p> <p>6 Q. Do you know what the University Of Delaware</p> <p>7 does to assess tuition pricing, market value?</p> <p>8 A. Not specifically, no. Though, I don't really</p> <p>9 have to, I think.</p> <p>10 Q. Do you know if the University of Delaware</p> <p>11 prices tuition with the intention of achieving a certain</p> <p>12 enrollment?</p> <p>13 A. I'm not sure what their goals are, but</p> <p>14 whatever their goals are and methods are reflected in the</p> <p>15 range of prices used in my constraint.</p> <p>16 Q. Just by virtue of the output being whatever</p> <p>17 price they set?</p> <p>18 A. Right.</p> <p>19 Q. But don't the goals dictate on some level what</p> <p>20 they will do with respect to pricing? In other words, if</p> <p>21 they want to achieve a certain enrollment, isn't that</p> <p>22 important to you in order to be able to determine how to</p> <p>23 set pricing?</p> <p>24 A. Well, A, I think that's question for Mr. Weir,</p>
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<p>1 A. Again, you are using a term that doesn't quite</p> <p>2 seem applicable to me, but just to work with you,</p> <p>3 students are choosing among universities of a certain</p> <p>4 group which they would like, they are interested in</p> <p>5 attending or would consider attending.</p> <p>6 Q. In paragraph 20 of your report you state, "HB</p> <p>7 CBC partworth estimates are best suited for calculating</p> <p>8 statistics at the market level."</p> <p>9 So it's that market that I'm asking about.</p> <p>10 What market level is that referring to?</p> <p>11 A. What I am saying is that while Hierarchical</p> <p>12 Bayes estimation is really as good as it gets for</p> <p>13 conjoint analysis or choice-based conjoint analysis, the</p> <p>14 partworths that are achieved or estimated would have a</p> <p>15 considerable amount of random sampling noise because</p> <p>16 there's not that much data backing up each partworth.</p> <p>17 And that's true for any choice-based conjoint with</p> <p>18 Hierarchical Bayes estimation.</p> <p>19 So what I am saying is that you should</p> <p>20 not, that you should acknowledge that level of noise. It</p> <p>21 doesn't mean that the partworth has nothing to say and</p> <p>22 that it's not useful. It's just that you may not have</p> <p>23 enough information to judge its statistical significance</p> <p>24 either way. But when it is in a group, those random</p>	<p>1 an economics question. And B, I am keeping the</p> <p>2 enrollment level constant in my analysis as is Mr. Weir.</p> <p>3 So I am not sure of the pertinence of your question.</p> <p>4 Q. Do you also think it's impertinent to know</p> <p>5 whether or not the university sets pricing in comparison</p> <p>6 to its perceived competitors?</p> <p>7 A. Well, again, that's something that's factored</p> <p>8 into my range of market prices used in my survey.</p> <p>9 Q. Factored in just by virtue of the actual list</p> <p>10 prices that you have seen; right?</p> <p>11 A. Yes. It reflects that sort of competition.</p> <p>12 Q. But when you say that Delaware's, University</p> <p>13 of Delaware's objectives in setting tuition prices are</p> <p>14 factored into your survey by virtue of you knowing what</p> <p>15 the prices are, you don't actually have any knowledge --</p> <p>16 you don't incorporate it in any other material way or any</p> <p>17 other way at all apart from just stating this is the</p> <p>18 price; is that correct?</p> <p>19 A. I don't believe I state: This is the price.</p> <p>20 I give a range of market prices that reflect the supply</p> <p>21 and demand conditions extant at that time.</p> <p>22 Q. I want to move to paragraph 33 in your report.</p> <p>23 The pretesting questionnaire. We already talked about</p> <p>24 the fact that it was pretested with 20 respondents. And</p>

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<p style="text-align: right;">Page 178</p> <p>1 BY MR. SINGER:</p> <p>2 Q. Who conducted the preliminary pretesting,</p> <p>3 individuals?</p> <p>4 A. The staff at AMS. I'm not sure which ones did</p> <p>5 each and every pretest.</p> <p>6 Q. Did the same individual at AMS conduct all ten</p> <p>7 preliminary pretests?</p> <p>8 A. Could be. I'm not positive. They are all</p> <p>9 competent to do it.</p> <p>10 Q. And in order to ensure -- if it's multiple</p> <p>11 individuals, in order to ensure that they conduct the</p> <p>12 pretesting in the same way according to that protocol,</p> <p>13 are they given any documents to guide the pretesting?</p> <p>14 A. No. These are highly trained individuals.</p> <p>15 They are business and litigation -- or out of litigation,</p> <p>16 if they also work out of litigation -- is to interview</p> <p>17 respondents. So they are very good at it and they know</p> <p>18 what they are doing.</p> <p>19 Q. And your testimony is that AMS doesn't make</p> <p>20 notes of the information they learned during preliminary</p> <p>21 pretesting for purposes of discussion after the</p> <p>22 pretesting; is that right?</p> <p>23 A. I'm saying that the notes made are shown in</p> <p>24 exhibits F and G.</p>	<p style="text-align: right;">Page 180</p> <p>1 A. I'm not sure. It's our standard sort of</p> <p>2 script for the final pretest.</p> <p>3 Q. Whose standard -- Steven L. Gaskin, LLC's,</p> <p>4 Colin Weir's, AMS's? Whose standard script is it?</p> <p>5 A. Actually, my middle initial is not L, but you</p> <p>6 are close. It had been in existence when I was back at</p> <p>7 AMS. It has been around for a while.</p> <p>8 Q. So you did not prepare this pretest, this</p> <p>9 final pretest in Exhibit G for purposes of the conjoint</p> <p>10 in this case; correct?</p> <p>11 A. I signed off on it. I found it to be</p> <p>12 satisfactory, but I didn't prepare it. It's similar to</p> <p>13 other ones that I have done.</p> <p>14 Q. When was the preliminary pretesting conducted?</p> <p>15 A. I can't recall. If it doesn't say so in the</p> <p>16 report, I'm not sure. It was before the survey was</p> <p>17 fielded, I know that.</p> <p>18 Q. The same thing for final pretest interviews?</p> <p>19 A. Yes.</p> <p>20 Q. How did you test that respondents did not have</p> <p>21 difficulty with the questions and instructions during the</p> <p>22 preliminary pretest?</p> <p>23 A. That part of that sentence and the other</p> <p>24 things around it in that paragraph are all related to</p>
<p style="text-align: right;">Page 179</p> <p>1 Q. You have not reviewed or relied upon any</p> <p>2 documents related to the pretesting other than what's in</p> <p>3 Exhibit F and G; is that correct?</p> <p>4 A. That's correct.</p> <p>5 Q. Looking at Exhibit G, were these pretests</p> <p>6 administered verbally or in writing?</p> <p>7 A. Verbally, over the phone.</p> <p>8 Q. So did the pretest, the final pretest</p> <p>9 interviewers have this script in Exhibit G to work off of</p> <p>10 when asking the respondents the questions?</p> <p>11 A. Yes. And they filled it in as they went</p> <p>12 along.</p> <p>13 Q. But they don't have that same type of script</p> <p>14 for the preliminary pretesting; is that right?</p> <p>15 A. Well, as we've discussed, it's a different</p> <p>16 kind of interview. It's a very organized and fixed set</p> <p>17 of questions in the final pretest. It's a different kind</p> <p>18 of interview.</p> <p>19 Q. Are either the pretests, the preliminary</p> <p>20 pretests or the final pretest recorded by audio or visual</p> <p>21 means?</p> <p>22 A. No, they are not.</p> <p>23 Q. Who prepared this script for the final</p> <p>24 pretest?</p>	<p style="text-align: right;">Page 181</p> <p>1 questions in the final pretests, as well as the general</p> <p>2 nature of the preliminary pretest.</p> <p>3 Q. When you say "general nature of the</p> <p>4 preliminary pretest," what do you mean?</p> <p>5 A. Well, I believe you are referring to problems</p> <p>6 with the questions, that's the sort of thing that could</p> <p>7 be found in the preliminary pretest. Also, we have a</p> <p>8 question, if we look at the final pretest script or</p> <p>9 answers that asks: Were you able to answer all the</p> <p>10 questions? And there's other sort of similar questions</p> <p>11 that help indicate their understanding.</p> <p>12 Q. Is there data that -- or anything you rely on</p> <p>13 that indicates the appropriate sample size for</p> <p>14 pretesting?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. What is that?</p> <p>17 A. There's been a lot of work done on qualitative</p> <p>18 research and, by professors I have worked with, which I</p> <p>19 helped with, back in the '80s. And it's generally well</p> <p>20 known that a sufficient sample for qualitative surveys,</p> <p>21 or even for pretests of a concrete notion like the final</p> <p>22 pretest, 10 or 20 is enough. Just as there's general</p> <p>23 rules for quantitative surveys or conjoints.</p> <p>24 Q. Did you utilize the pretest to identify the</p>

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<p>1 to actual 18-year-old University of Delaware students?</p> <p>2 MR. ARISOHN: I object to form. Compound</p> <p>3 question.</p> <p>4 THE WITNESS: I think that those students</p> <p>5 were sufficiently similar in that they were making a</p> <p>6 similar decision, and they were considering similar types</p> <p>7 of schools. So I felt -- and whether it was in the past</p> <p>8 or not, I feel that they are able to make this sort of</p> <p>9 consideration. So I felt it was appropriate.</p> <p>10 BY MR. SINGER:</p> <p>11 Q. Can you identify any authority that supports</p> <p>12 your feeling that a 40-year-old who applied to UC</p> <p>13 Riverside in 2002 is representative of an 18-year-old who</p> <p>14 attended the University of Delaware in the spring of</p> <p>15 2020?</p> <p>16 A. Well, your question is a little awkward</p> <p>17 because you are putting a number of different things in</p> <p>18 there, but what I am saying is that preferences or</p> <p>19 customer needs do not change much over time. And so the</p> <p>20 response would be similar, I think, for the two types of</p> <p>21 person you mentioned.</p> <p>22 Q. So you cannot identify any authorities;</p> <p>23 correct?</p> <p>24 A. Well, I am quoting an article from a respected</p>	<p>1 A. I have not looked at that specifically. But,</p> <p>2 again, wherever they come from, that doesn't necessarily</p> <p>3 tell me they will react differently to the issues in this</p> <p>4 case.</p> <p>5 Q. Have you done any work to determine whether</p> <p>6 any University of Delaware students ever applied to the</p> <p>7 University of California Riverside or vice versa?</p> <p>8 A. I have not. But, again, you have to remember</p> <p>9 that this university attribute is just a distractor.</p> <p>10 They were applying for a university, so -- with a campus,</p> <p>11 so, you know, they are similar in many ways.</p> <p>12 Q. Well, Mr. Gaskin, you told me earlier that you</p> <p>13 factored in geographic as an attribute into your survey</p> <p>14 by virtue of the name of the university such that</p> <p>15 students were considering that; right?</p> <p>16 A. That's not entirely correct, no. I provided</p> <p>17 the campus location in addition to the name.</p> <p>18 Q. Wouldn't it be, if you are going to target</p> <p>19 individuals who applied to, accepted, or attended the</p> <p>20 University of Delaware or one of its competitors, to use</p> <p>21 your language, isn't it important to determine they are</p> <p>22 actual competitors?</p> <p>23 A. Well, again, I'm not saying I didn't look at</p> <p>24 the University of Delaware website, it's just been a</p>
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<p>1 conjoint analysis professor.</p> <p>2 Q. What article?</p> <p>3 A. Or actually it was testimony from a conjoint</p> <p>4 analysis professor in the Anthem case. It was Dr. Peter</p> <p>5 Rossi. But it's a well-known fact anyway.</p> <p>6 Q. How is it that you decided that the University</p> <p>7 of California Riverside is a competitor to the University</p> <p>8 of Delaware?</p> <p>9 A. Well, there's no bright red line for</p> <p>10 competitors. People can apply to a number of schools of</p> <p>11 different natures, and they make tradeoffs and decide</p> <p>12 which one to enroll in. So people could have enrolled in</p> <p>13 both of them. So, in that sense, they are competitors.</p> <p>14 Q. Have you done any work to determine who the</p> <p>15 University of Delaware perceives to be its actual</p> <p>16 competitors?</p> <p>17 A. It's been a while. I can't remember if I read</p> <p>18 that or not, but there was some consideration of the</p> <p>19 school list. It's just been a while, so I can't remember</p> <p>20 exactly how we did it.</p> <p>21 Q. Have you looked at the demographics of the</p> <p>22 student population at University of California Riverside</p> <p>23 compared to those of the University of Delaware in terms</p> <p>24 of where they come from geographically?</p>	<p>1 while, I can't quite remember. But there's no set</p> <p>2 definition for competitors. There's no bright red line</p> <p>3 that this school is a competitor and that one is not. So</p> <p>4 I have done what research I can, and I believe that all</p> <p>5 of these would be regarded as competitors.</p> <p>6 Q. You also relied on a list of 15,000 records</p> <p>7 provided by the University of Delaware containing email</p> <p>8 addresses of current and former University of Delaware</p> <p>9 students; correct?</p> <p>10 A. I attempted to, yes.</p> <p>11 Q. What do you mean? Your report doesn't say you</p> <p>12 attempted to, it says you relied on a list. Did you not</p> <p>13 rely on that list?</p> <p>14 A. Let's say I relied on that list. I am just</p> <p>15 saying that not many of my respondents are from that</p> <p>16 list.</p> <p>17 Q. What percentage of your respondents are from</p> <p>18 that list?</p> <p>19 A. I think 17 are from that list.</p> <p>20 Q. Out of how many?</p> <p>21 A. 994.</p> <p>22 Q. So less than 1 percent of the survey</p> <p>23 respondents are actual University of Delaware students;</p> <p>24 correct?</p>

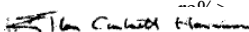
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<p>1 Q. And where are you getting the 17,250 from that</p> <p>2 you are using?</p> <p>3 A. It's the maximum price in the range of prices</p> <p>4 in my conjoint analysis.</p> <p>5 Q. You could have chosen to divide that 2,614.33</p> <p>6 into other tuition figures within your conjoint analysis</p> <p>7 and turned out an opinion and a percentage basis by doing</p> <p>8 it that way as well; correct?</p> <p>9 A. I suppose; but that's not my methodology, so I</p> <p>10 don't.</p> <p>11 Q. And doing that would yield different</p> <p>12 overpayment percentages; correct?</p> <p>13 A. Yes, but mine is the most conservative choice.</p> <p>14 Q. And you divided it into the 17,250 just</p> <p>15 because that was the decision you made; correct?</p> <p>16 A. I believe it's 17,250, not 15,250.</p> <p>17 Q. Yes, I said 17.</p> <p>18 A. As I said, I made the most conservative</p> <p>19 choice.</p> <p>20 Q. I understand that, but you made that choice</p> <p>21 just based on your own doing, your own choosing; correct?</p> <p>22 You could have chosen something else; right?</p> <p>23 A. Well, my methodology is -- that I have used</p> <p>24 over and over and has been accepted many times -- is to</p>	<p>1 randomized first choice simulation prices or any of the</p> <p>2 tuitions, you just get to pick, divide, and spit out your</p> <p>3 percentage; correct?</p> <p>4 A. Well, as I said, it's a matter of my judgment.</p> <p>5 And my judgment is do it in the most conservative manner</p> <p>6 possible.</p> <p>7 Q. And that is the exact same approach that you</p> <p>8 took in the Volkswagen case that the Court said was</p> <p>9 unreliable; correct?</p> <p>10 A. I don't know that they said that in particular</p> <p>11 was unreliable, but in the 20 that I presented in my</p> <p>12 report, it was judged to be reliable.</p> <p>13 Q. In the Volkswagen case, the Court stated that</p> <p>14 merely picking the lowest number in the range of</p> <p>15 overpayment percentages does not remove doubt; correct?</p> <p>16 A. I don't remember. You would have to show me</p> <p>17 the document. But even if it did, that's one case. I</p> <p>18 have 20 that say otherwise. And I have offered you a</p> <p>19 linear price partworth model that removes that obstacle</p> <p>20 should you wish -- should you agree to use it.</p> <p>21 Q. Just like you did in the Volkswagen case, you</p> <p>22 made the same choice in this case to use the lowest</p> <p>23 number to calculate your overcharge amount; correct?</p> <p>24 A. Yes. And in the 20 that have been accepted,</p>
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<p>1 make the most conservative choice. I don't choose the</p> <p>2 others.</p> <p>3 Q. But your overcharge payment -- your overcharge</p> <p>4 percentage is purely based on whatever you choose to use</p> <p>5 for the tuition; correct?</p> <p>6 A. It reflects the market price of the school in</p> <p>7 the conjoint, so it's not made up.</p> <p>8 Q. My point is that you could have chosen any of</p> <p>9 these numbers from the randomized first choice simulation</p> <p>10 and divided any of them into any of the tuition prices to</p> <p>11 reach your overpayment percentage; correct?</p> <p>12 A. If I were not following my method. Again, I</p> <p>13 presented a linear price partworth model that doesn't</p> <p>14 involve the choice of which starting price to base it on.</p> <p>15 If you all would prefer to use that, it's fine with me.</p> <p>16 But I am trying to make the most conservative choice.</p> <p>17 Q. Conjoint methodology doesn't require you to</p> <p>18 make any specific choice to get to an accurate</p> <p>19 percentage; correct?</p> <p>20 A. Well, I have used this method many times. It</p> <p>21 has worked very well. It's conservative, but I also</p> <p>22 found it to be accurate.</p> <p>23 Q. That's not my question. Conjoint methodology</p> <p>24 does not require you to use any specific one of the</p>	<p>1 which that judge ignored, with all due respect, when he</p> <p>2 made that decision, or failed to differentiate it from</p> <p>3 all those other cases.</p> <p>4 Q. But, again, in those 20 cases, you were not</p> <p>5 subject to a Daubert motion in any of them were you?</p> <p>6 A. I was in every one of them.</p> <p>7 Q. Every one of them?</p> <p>8 A. They always challenge my reports. By top</p> <p>9 marketing scientists in the world. I am always</p> <p>10 challenged, and I have won 20 times.</p> <p>11 Q. You actually calculated an overpayment</p> <p>12 percentage ranging from 14.2 percent to 57 percent,</p> <p>13 didn't you?</p> <p>14 A. No. I selected my values, and then I did the</p> <p>15 one single percentage based on my method. I did not do</p> <p>16 all of those.</p> <p>17 Q. If we take the data that you've put together</p> <p>18 here in Exhibit K-3 and K-4, and we look at all of the</p> <p>19 various overpayment percentages that your data allows to</p> <p>20 be determined, what we have is a range in overpayment</p> <p>21 percentages from 14 to 57 percent; isn't that correct?</p> <p>22 MR. ARISOHN: Objection. Asked and</p> <p>23 answered.</p> <p>24 THE WITNESS: Look, you can do any math</p>

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<p style="text-align: right;">Page 254</p> <p>1 Q. And that's because willingness to pay only</p> <p>2 incorporates demand side; correct?</p> <p>3 A. That's the generally accepted wisdom.</p> <p>4 Q. You use the same pretesting methodology in</p> <p>5 this case as you used in the Volkswagen case; correct?</p> <p>6 A. That's correct. And in all those 20 cases</p> <p>7 that were accepted, and Judge Orrick, who did, say,</p> <p>8 Maldonado v. Apple, reviewed that and said there's</p> <p>9 nothing wrong here. He did a fine pretest. Right after</p> <p>10 Nemeth. And, again, the judge misunderstood what I did.</p> <p>11 MR. SINGER: Matt, can we go off the</p> <p>12 record for a minute for me to take a look at my notes,</p> <p>13 please.</p> <p>14 THE VIDEOGRAPHER: The time is 6:19.</p> <p>15 Going off the video record.</p> <p>16 (A brief recess was taken.)</p> <p>17 THE VIDEOGRAPHER: The time is 6:35. We</p> <p>18 are on the video record.</p> <p>19 BY MR. SINGER:</p> <p>20 Q. Mr. Gaskin, could you turn to Exhibit I,</p> <p>21 please.</p> <p>22 A. All right.</p> <p>23 Q. And can you just generally explain what is</p> <p>24 being conveyed in Exhibit I?</p>	<p style="text-align: right;">Page 256</p> <p>1 A. I suppose so, but, like, as I may have said,</p> <p>2 if you have Lighthouse Studio software, you don't need</p> <p>3 the design file. Within the version we've sent you, you</p> <p>4 can just read it in with a push of a button. It knows.</p> <p>5 Q. Can you explain what Exhibit O is please?</p> <p>6 A. It is the CBC-HB settings for running the</p> <p>7 Hierarchical Bayes choice model.</p> <p>8 Q. What does that mean? What do those settings</p> <p>9 refer to?</p> <p>10 A. Well, there's various forms you encounter</p> <p>11 while running the model. And this shows what you can --</p> <p>12 how you can set those to do various things. And it</p> <p>13 shows -- and everything else we don't explicitly discuss</p> <p>14 as a default. So it's an aid in reproducing the</p> <p>15 analysis.</p> <p>16 Q. In your report, Footnote 52, you state: "The</p> <p>17 reduction in market value is significantly different from</p> <p>18 zero at the 95 percent confidence level."</p> <p>19 What does that mean?</p> <p>20 A. Well, we just went over that confidence</p> <p>21 interval output, and you saw how the lower bound of the</p> <p>22 95 percent confidence interval was, I think, 14.04</p> <p>23 percent. That's considerably above zero, so that's what</p> <p>24 that means.</p>
<p style="text-align: right;">Page 255</p> <p>1 A. Where is my report? Oh, here it is, Exhibit</p> <p>2 10.</p> <p>3 Okay, here is I. Those are average</p> <p>4 partworths.</p> <p>5 Q. Can you just generally explain what is being</p> <p>6 conveyed with the data, the values in the right-hand</p> <p>7 column?</p> <p>8 A. It shows the average partworth for each level</p> <p>9 of each attribute. And the higher the number, the</p> <p>10 better. And the lower the number, the less preferred.</p> <p>11 And so that's what this shows.</p> <p>12 Q. Can you explain what Exhibit M conveys?</p> <p>13 A. Just a moment. Exhibit N in the conjoint data</p> <p>14 listing. It's the data from the tradeoff exercises that</p> <p>15 go into Sawtooth Software.</p> <p>16 Q. You said N as in Nancy?</p> <p>17 A. N as in Nancy or November. That's what I</p> <p>18 thought you asked me.</p> <p>19 Q. That's okay. So that's Exhibit N as in Nancy.</p> <p>20 What is Exhibit M as in Mary?</p> <p>21 A. Ah, that would be the data listing for the</p> <p>22 screener data, the screener portion of the questionnaire.</p> <p>23 Q. And your design file would help somebody</p> <p>24 understand Exhibit N in more detail; correct?</p>	<p style="text-align: right;">Page 257</p> <p>1 Q. Okay. What is focalism bias?</p> <p>2 A. It's a kind of bias that was thought of where</p> <p>3 the presentation of something in a survey gives that</p> <p>4 thing undue attention and causes it to get more attention</p> <p>5 than it would otherwise.</p> <p>6 Q. Do you agree that evaluation tasks</p> <p>7 intentionally force respondents to attend to attributes</p> <p>8 that they might otherwise not notice?</p> <p>9 A. No. And in this case it certainly is an</p> <p>10 important attribute, so I don't -- and it's presented no</p> <p>11 more vividly than the others, so I don't -- well, you</p> <p>12 asked generally. What's your question?</p> <p>13 Q. My question was: Do you agree that evaluation</p> <p>14 tasks intentionally force respondents to attend to</p> <p>15 attributes that they might otherwise not notice?</p> <p>16 A. Well, I don't agree with the general sentiment</p> <p>17 of that, because it implies bias. It's not clear that it</p> <p>18 does.</p> <p>19 There's in new product development</p> <p>20 applications, for example, you are you often testing a</p> <p>21 feature that's entirely new and does not exist in the</p> <p>22 marketplace. And you must include it to test it. And</p> <p>23 there's no general rule that that causes a bias.</p> <p>24 Q. How about in the higher ed, how about with</p>

STEVEN P. GASKIN

<p style="text-align: right;">Page 266</p> <p>1 matrix and a couple of other documents that I believe 2 came up earlier in the deposition. 3 So we certainly reserve the right to keep 4 this deposition open and come back and ask additional 5 questions on materials that we didn't receive in response 6 to the deposition notice in advance of the deposition. 7 MR. ARISOHN: I was not told that there 8 were files that the defendant was unable to access, so I 9 am not going to take responsibility for that. 10 But thank you everybody for your time 11 today. Thank you to the court reporter. And the 12 plaintiff has no questions. 13 THE VIDEOGRAPHER: Did you say the 14 plaintiffs have no questions? 15 MR. ARISOHN: Correct. We are done. 16 Thank you. Thank you, Matt. 17 THE VIDEOGRAPHER: The time is 6:58. We 18 are going off the video record. This concludes the video 19 deposition of Steven Gaskin. 20 - - - 21 (Witness excused.) 22 - - - 23 (Deposition concluded at 6:58 p.m.) 24</p>	<p style="text-align: right;">Page 268</p> <p>1 Joshua Arisohn, Esquire 2 jarisohn@bursor.com 3 August 26, 2022 4 RE: Ninivaggi, Penny Et Al v. University Of Delaware 5 8/12/2022, Steven P. Gaskin (#5363838) 6 The above-referenced transcript is available for 7 review. 8 Within the applicable timeframe, the witness should 9 read the testimony to verify its accuracy. If there are 10 any changes, the witness should note those with the 11 reason, on the attached Errata Sheet. 12 The witness should sign the Acknowledgment of 13 Deponent and Errata and return to the deposing attorney. 14 Copies should be sent to all counsel, and to Veritext at 15 cs-midatlantic@veritext.com 16 17 Return completed errata within 30 days from 18 receipt of transcript. 19 If the witness fails to do so within the time 20 allotted, the transcript may be used as if signed. 21 22 Yours, 23 Veritext Legal Solutions 24 25</p>
<p style="text-align: right;">Page 267</p> <p>1 C E R T I F I C A T E 2 3 4 I do hereby certify that I am a Notary Public in 5 good standing, that the aforesaid testimony was taken 6 before me, pursuant to notice, at the time and place 7 indicated; that said deponent was by me duly sworn to 8 tell the truth, the whole truth, and nothing but the 9 truth; that the testimony of said deponent was correctly 10 recorded in machine shorthand by me and thereafter 11 transcribed under my supervision with computer-aided 12 transcription; that the deposition is a true and correct 13 record of the testimony given by the witness; and that I 14 am neither of counsel nor kin to any party in said 15 action, nor interested in the outcome thereof. 16 17 WITNESS my hand this 25th day of August, 2022. 18 19 20 21  22 _____ 23 Notary Public 24</p>	<p style="text-align: right;">Page 269</p> <p>1 Ninivaggi, Penny Et Al v. University Of Delaware 2 Steven P. Gaskin (#5363838) 3 E R R A T A S H E E T 4 PAGE____ LINE____ CHANGE_____ 5 _____ 6 REASON_____ 7 PAGE____ LINE____ CHANGE_____ 8 _____ 9 REASON_____ 10 PAGE____ LINE____ CHANGE_____ 11 _____ 12 REASON_____ 13 PAGE____ LINE____ CHANGE_____ 14 _____ 15 REASON_____ 16 PAGE____ LINE____ CHANGE_____ 17 _____ 18 REASON_____ 19 PAGE____ LINE____ CHANGE_____ 20 _____ 21 REASON_____ 22 _____ 23 _____ 24 Steven P. Gaskin Date _____ 25</p>

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1 Ninivaggi, Penny Et Al v. University Of Delaware

2 Steven P. Gaskin (#5363838)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Steven P. Gaskin, do hereby declare that I

5 have read the foregoing transcript, I have made any

6 corrections, additions, or changes I deemed necessary as

7 noted above to be appended hereto, and that the same is

8 a true, correct and complete transcript of the testimony

9 given by me.

10

11 _____

12 Steven P. Gaskin Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 _____ DAY OF _____, 20____.

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NOTARY PUBLIC

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69 (Page 270)

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EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Penny NINIVAGGI, et al., individually and
on behalf of all others similarly situated,
Plaintiffs,

v. Civil Action No. 20-cv-1478-SB
UNIVERSITY OF DELAWARE,
Defendant.

HANNAH RUSSO, individually and
on behalf of all others similarly situated,
Plaintiffs,

v. Civil Action No. 20-cv-1693-SB
UNIVERSITY OF DELAWARE,
Defendant.

VIDEO-RECORDED REMOTE ZOOM VIDEOCONFERENCE

DEPOSITION OF COLIN B. WEIR

Taken Friday, August 19, 2022

Scheduled for 9:30 a.m. EDT

REPORTED BY: DANA S. ANDERSON-LINNELL

Job No.: 5363898

<p style="text-align: right;">Page 46</p> <p>1 long would you estimate it takes to do the</p> <p>2 front end work, prepare the survey and then</p> <p>3 actually go out to the field with it?</p> <p>4 A. It's usually six to eight weeks, but that</p> <p>5 can be potentially -- it's never going to be</p> <p>6 much shorter, but it could potentially be</p> <p>7 longer than that.</p> <p>8 Q. And if you would, just in terms of hours</p> <p>9 is this a hundred-hour project, a couple</p> <p>10 hundred-hour project? What's your estimate in</p> <p>11 terms of the time required to actually build</p> <p>12 it?</p> <p>13 A. I don't have an estimate for that. I hear</p> <p>14 Steve quote budgets for projects like this, and</p> <p>15 it's always in dollars and cents, not number of</p> <p>16 hours.</p> <p>17 Q. And when you hear kind of a</p> <p>18 dollar-and-cent budget, what ballpark do you</p> <p>19 hear?</p> <p>20 A. That a full conjoint with results is</p> <p>21 probably around a \$100,000 affair, could be a</p> <p>22 little bit less and might be more depending</p> <p>23 upon the facts and circumstances of the case.</p> <p>24 Q. And do you have an understanding of, you</p> <p>25 know, about how many hours that entails to get</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. Yeah, I'm going to get you there. Yep.</p> <p>2 So in paragraph 6 -- and this is going to some</p> <p>3 of the questions we were just talking about, so</p> <p>4 maybe it's already covered, but you say there</p> <p>5 roughly in the middle of paragraph 6 that you</p> <p>6 were asked to work with Gaskin, Mr. Gaskin</p> <p>7 "...to help design (from an economic</p> <p>8 perspective), and to evaluate the economic</p> <p>9 suitability of a conjoint survey (to be</p> <p>10 designed, implemented, and analyzed by</p> <p>11 Mr. Gaskin)..."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. When you say "to help design (from</p> <p>15 an economic perspective)," is that what you</p> <p>16 just told me about?</p> <p>17 A. Yes, relating to market prices, the supply</p> <p>18 side, controls and other related factors to</p> <p>19 that.</p> <p>20 Q. Anything else that you would add beyond</p> <p>21 that description?</p> <p>22 A. I mean, I guess we could get very nuanced</p> <p>23 about that, but I think those are the</p> <p>24 high-level things along with, again, ensuring</p> <p>25 that there was an attribute and level that was</p>
<p style="text-align: right;">Page 47</p> <p>1 to that ballpark hundred-thousand-dollar</p> <p>2 figure?</p> <p>3 A. I mean, I guess we could do some</p> <p>4 back-of-the-envelope and say if people are</p> <p>5 charging several hundred dollars an hour, that</p> <p>6 it has to translate into hundreds of hours.</p> <p>7 But, again, I really am not in the best</p> <p>8 position to tell you how many hours Steve or</p> <p>9 his staff spent on this particular project.</p> <p>10 Q. And do you have any understanding of how</p> <p>11 much time Mr. Gaskin spent versus AMS in this</p> <p>12 particular project?</p> <p>13 A. I don't have any independent knowledge of</p> <p>14 that.</p> <p>15 Q. How much time did you spend on the</p> <p>16 conjoint portion of this case, you know, sort</p> <p>17 of providing the high-level input, as you</p> <p>18 described it?</p> <p>19 A. A couple of hours.</p> <p>20 Q. So we've got your August 1 declaration in</p> <p>21 front of you. And we were talking about the</p> <p>22 sort of exhibit piece of it. Let's turn to the</p> <p>23 narrative portion, if you will.</p> <p>24 A. Okay. Do you have a particular page or</p> <p>25 paragraph?</p>	<p style="text-align: right;">Page 49</p> <p>1 designed to measure plaintiffs' theory of</p> <p>2 liability.</p> <p>3 Q. Why do you believe that higher ed</p> <p>4 selections can be broken down into measurable</p> <p>5 attributes?</p> <p>6 A. I'm sorry. I guess I don't understand</p> <p>7 that question.</p> <p>8 Q. The fundamental point is ultimately</p> <p>9 getting at why do you think conjoint works in a</p> <p>10 case like this. But I understand that, you</p> <p>11 know, in your world when you're talking about</p> <p>12 from a marketing perspective, talking about a</p> <p>13 particular product, and let's just say</p> <p>14 hypothetically, right, a dishwasher, you can</p> <p>15 breakdown a consumer's preferences and options</p> <p>16 into particular measurable attributes, right?</p> <p>17 A. I do believe that you could do a conjoint</p> <p>18 about dishwashers. Whether or not it could</p> <p>19 answer questions about every particular</p> <p>20 attribute I think would -- I would need to do</p> <p>21 some work to get to that level.</p> <p>22 Q. Yeah. And I'm certainly not asking that.</p> <p>23 I'm just asking more generally. In your field</p> <p>24 you can break down consumer -- consumer</p> <p>25 thoughts about dishwashers into various</p>

<p style="text-align: right;">Page 50</p> <p>1 attributes, right?</p> <p>2 A. That sounds maybe like a misdescription of</p> <p>3 what we do. I do believe that you can design a</p> <p>4 conjoint survey that could tell you how</p> <p>5 consumers respond and/or how a market would</p> <p>6 respond to changes in the features or levels of</p> <p>7 those types of products.</p> <p>8 Q. And what role do the attributes that you</p> <p>9 come up with play in that analysis?</p> <p>10 A. That is a complicated question and depends</p> <p>11 a lot on the facts and circumstances of the</p> <p>12 research objective of the study that one is</p> <p>13 conducting.</p> <p>14 Q. So -- but it is -- but it is discernable</p> <p>15 when you're using my dishwasher example, do we</p> <p>16 agree?</p> <p>17 A. Is what discernable?</p> <p>18 Q. The attributes.</p> <p>19 A. If you do a conjoint survey about</p> <p>20 dishwashers, there are going to have to be some</p> <p>21 attributes and levels in the survey by</p> <p>22 definition of what conjoint is.</p> <p>23 Q. Why do you think the same analysis or</p> <p>24 process can be used in the higher ed world?</p> <p>25 A. Well, the literature on conjoint very</p>	<p style="text-align: right;">Page 52</p> <p>1 develop parts of the survey. So same question</p> <p>2 as what I was asking you: Is that what you</p> <p>3 already described, or was there any other</p> <p>4 particular contribution you made to the survey</p> <p>5 itself?</p> <p>6 A. Again, if we accept that what we've talked</p> <p>7 about has been discussed at a high level, then</p> <p>8 yes, I'm referring to those same topics.</p> <p>9 Q. Did you provide any particular survey</p> <p>10 questions to Mr. Gaskin?</p> <p>11 A. Well, I mean, all the conjoint questions</p> <p>12 are the same, which one of these schools would</p> <p>13 you pick. So no, I did not provide additional</p> <p>14 questions to Mr. Gaskin.</p> <p>15 Q. Did you provide any particular attributes</p> <p>16 to Mr. Gaskin?</p> <p>17 A. Again, we discussed price, and we</p> <p>18 discussed what I would describe as the</p> <p>19 attribute and level of interest. Beyond that</p> <p>20 the remainder of the attributes and levels were</p> <p>21 selected by Mr. Gaskin.</p> <p>22 Q. High level, your declaration ultimately</p> <p>23 boils down to two calculations, one regarding</p> <p>24 overpayment damages, as you refer to it, and</p> <p>25 one regarding the return of tuition for missed</p>
<p style="text-align: right;">Page 51</p> <p>1 broadly indicates that it is both robust and</p> <p>2 very flexible and isn't designed, for example,</p> <p>3 to study only dishwashers. And then there is</p> <p>4 peer-reviewed literature on people that have</p> <p>5 studied higher education using conjoint. So</p> <p>6 that's another data point that would indicate</p> <p>7 that this is a reliable use of the method. And</p> <p>8 I'm just aware generally that colleges and</p> <p>9 universities use conjoint not only as they</p> <p>10 teach their students how to use that technique</p> <p>11 but to make their own decisions about various</p> <p>12 things. So those sort of general things guide</p> <p>13 me to believe and feel very comfortable with</p> <p>14 the use of conjoint as it relates to higher</p> <p>15 education.</p> <p>16 Q. Did any of what you just described in</p> <p>17 terms of your familiarity with the literature</p> <p>18 or familiarity with the teaching at</p> <p>19 institutions involve a calculation measuring</p> <p>20 purported damages based on educational</p> <p>21 modality?</p> <p>22 A. I don't recall.</p> <p>23 Q. Paragraph 28 of your declaration, and you</p> <p>24 can certainly turn there, but it just says,</p> <p>25 again, that you worked with Mr. Gaskin to</p>	<p style="text-align: right;">Page 53</p> <p>1 days. Do you agree with that?</p> <p>2 A. I would say those are the two frameworks</p> <p>3 for damages that I set forth in the report,</p> <p>4 yes.</p> <p>5 Q. The second calculation, return of tuition</p> <p>6 for missed days, as you phrase it, does not</p> <p>7 hinge on any work performed by Mr. Gaskin or</p> <p>8 AMS, is that correct?</p> <p>9 A. Not to the best of my knowledge, no.</p> <p>10 Q. Okay. And I don't mean this to be</p> <p>11 disparaging, but frankly, it's a pretty simple</p> <p>12 calculation multiplying the net tuition total</p> <p>13 by your calculation of the percentage of missed</p> <p>14 days for that semester, right?</p> <p>15 A. I think one probably needs to have some</p> <p>16 good understanding of the inputs that should be</p> <p>17 used in that calculation and why they are</p> <p>18 appropriate and why they match plaintiffs'</p> <p>19 theory of liability, but I agree the underlying</p> <p>20 mathematics are not complicated once you've</p> <p>21 done the homework to understand that that is a</p> <p>22 reasonable method to calculate damages and,</p> <p>23 again, to understand and process the inputs</p> <p>24 that go into it.</p> <p>25 Q. And we'll go over obviously a little bit</p>

<p style="text-align: right;">Page 54</p> <p>1 later in more detail just sort of high level. 2 So then the overpayment damages calculation, 3 that, am I correct, derives directly from the 4 approximately 15 percent that Mr. Gaskin has 5 come up with from the conjoint? 6 A. There are three primary elements of the 7 calculation. One is indeed the Gaskin 8 overpayment factor, another is the tuition 9 payments, and the third is a prorating factor 10 that reflects the fraction of the semester 11 that's in question. 12 Q. But without Mr. Gaskin's output from a 13 conjoint analysis you could not perform that 14 calculation, right? 15 A. My framework is very flexible and could 16 use any economically reliable measure of 17 overpayment. It does not have to come from 18 Mr. Gaskin or per se a conjoint analysis. 19 Q. In this particular case and in this 20 particular calculation, without that input you 21 could not complete that calculation here? 22 A. I don't think that comports with what I 23 just said. I'm not going to suggest that I 24 don't use the Gaskin number. I do use it. But 25 if for some reason Mr. Gaskin were to say: Oh,</p>	<p style="text-align: right;">Page 56</p> <p>1 saying is faulty about the Gaskin conjoint. 2 Q. I understand your testimony. What other 3 economic methodologies could be used to 4 determine the overpayment factor then? 5 A. I could conceive of constructing a 6 different type of survey, which would be known 7 as contingent valuation, that could potentially 8 answer that question. I'm not sure whether or 9 not it would be possible to do it in this case, 10 but maybe a hedonic regression of university 11 tuition payments along with enough explanatory 12 variables that would allow you to isolate the 13 impact of the switch from in-person classes to 14 otherwise. That's another potential method. 15 MR. ARISOHN: Jim, if you -- when 16 you get to a good chance, can we just take a 17 quick restroom break? 18 MR. TAYLOR: Yeah. How about one 19 minute and I'll be done with this section? 20 MR. ARISOHN: Perfect. Thanks. 21 BY MR. TAYLOR: 22 Q. And on those other alternatives, Mr. Weir, 23 that you just mentioned just so that I'm clear 24 on the record, that -- those alternative 25 calculations or methodologies were not used</p>
<p style="text-align: right;">Page 55</p> <p>1 that's erroneous, but there was a different 2 overpayment factor, it could be used in just 3 the same way that I've used the Gaskin 4 overpayment number. 5 Q. But you have not pointed to another 6 alternative one here, correct? 7 A. Because I have the Gaskin number and 8 because I believe that is economically 9 reliable, no, I have not used an additional 10 source for overpayment. 11 Q. And if hypothetically the conjoint 12 analysis or its output was faulty here, then 13 your calculation would fail in this case too, 14 right? 15 A. I would need to know in what way you 16 believe the calculation is faulty for me to 17 answer that question. 18 Q. I'm asking a simpler question. 19 Hypothetically assume that there is something 20 faulty with the Gaskin calculation in this case 21 where that's the -- one of the three inputs, as 22 you just put it, then your calculation would 23 fail as well, correct? 24 A. No. My response would be the same. I 25 need to understand what it is that you're</p>	<p style="text-align: right;">Page 57</p> <p>1 here, correct? 2 A. I apologize if I misunderstood your 3 question. I thought you were asking generally 4 about available methods, not per se what has 5 been conducted. But no, I have not used those 6 other methods because we have the Gaskin 7 analysis in this case. 8 Q. Yeah, you didn't misunderstand. I just 9 wanted to make sure that that was clear on the 10 record. 11 All right. I asked you earlier about 12 conversations with Mr. Gaskin, and so this may 13 already be covered, but in paragraph 37 of your 14 declaration, and, again, you can certainly turn 15 there, but it's a simple point, it says that 16 you and Mr. Gaskin had several discussions 17 concerning the design of the survey where you 18 provided input. Is that what we've discussed 19 at a high level already? 20 A. Yes. 21 Q. All right. And it's the handful of 22 conversations that you mentioned earlier? 23 A. Yes. 24 Q. And if you had to guesstimate, about how 25 long in time do you believe you and Mr. Gaskin</p>

<p style="text-align: right;">Page 62</p> <p>1 the differences in educational services or</p> <p>2 offerings?</p> <p>3 A. Yeah, I think all five or six of those</p> <p>4 Ohio cases have been accepted.</p> <p>5 Q. And is it your understanding, and I'm just</p> <p>6 asking your understanding, that the Court there</p> <p>7 has accepted the conjoint as an appropriate</p> <p>8 measure for the alleged damages?</p> <p>9 A. I'm not an attorney, and I can't say that</p> <p>10 I've seen everything, but it's my understanding</p> <p>11 that the Court found that was acceptable enough</p> <p>12 to certify the class based upon that proposed</p> <p>13 damages methodology.</p> <p>14 Q. Are you aware of any other conjoint</p> <p>15 analyses that have been performed in the</p> <p>16 COVID-19 context?</p> <p>17 A. That's quite possible, but I would have to</p> <p>18 go back and check. Nothing is coming to mind</p> <p>19 as I sit here right now.</p> <p>20 Q. And how did you determine that -- the</p> <p>21 economic suitability of a conjoint survey to</p> <p>22 measure the alleged overpayment of tuition in</p> <p>23 this case?</p> <p>24 A. That related to the conversations that we</p> <p>25 discussed that happened between me and</p>	<p style="text-align: right;">Page 64</p> <p>1 documents that you reviewed. You're familiar</p> <p>2 with that?</p> <p>3 A. Yes. I'm just fanning to it in case we</p> <p>4 need to refer to it. But yes, I'm generally</p> <p>5 familiar with Exhibit 2.</p> <p>6 Q. And you have not relied on any documents</p> <p>7 other than those identified in that exhibit for</p> <p>8 your opinions in this case, correct?</p> <p>9 A. Certainly don't think there are any</p> <p>10 documents that I expressly rely on. Obviously</p> <p>11 I bring to bear my expertise, which comes from</p> <p>12 having reviewed other documents in the past.</p> <p>13 Q. But no other documents in connection with</p> <p>14 this case specifically or the facts in this</p> <p>15 case?</p> <p>16 A. I think that's right.</p> <p>17 Q. Okay. You did not speak with the</p> <p>18 plaintiffs, correct?</p> <p>19 A. No, I did not.</p> <p>20 Q. You've not read their deposition</p> <p>21 transcripts?</p> <p>22 A. I don't think so.</p> <p>23 Q. You identify, and I think it's the fourth</p> <p>24 line in your Exhibit B, the deposition of Robin</p> <p>25 Morgan. Let me pause there. Is that the only</p>
<p style="text-align: right;">Page 63</p> <p>1 Mr. Gaskin about the use of market-based prices</p> <p>2 in the survey and subsequent analyses as well</p> <p>3 as controls for the supply side.</p> <p>4 Q. And is it your testimony that you could</p> <p>5 have performed the conjoint yourself in this</p> <p>6 case?</p> <p>7 A. If you're asking do I have the credentials</p> <p>8 to have done all of the work in this place,</p> <p>9 then I would say yes. Whether or not I would</p> <p>10 have been able to do it from a practical</p> <p>11 standpoint in terms of time and resources, I</p> <p>12 don't know the answer to that.</p> <p>13 Q. Is it fair to say then that in your view</p> <p>14 the limiter is the sort of manpower, the</p> <p>15 resources, not the skill set?</p> <p>16 A. There are many -- or many reasons that</p> <p>17 people might hire Mr. Gaskin, but one of the</p> <p>18 reasons I tend to work with him is that I could</p> <p>19 not do all of the congenic work that we do</p> <p>20 together if it was all my responsibility just</p> <p>21 in terms of the practical sense of time and</p> <p>22 effort.</p> <p>23 Q. Exhibit 2 to your declaration, and, again,</p> <p>24 it's not enumerated, but it's the last several</p> <p>25 pages of your declaration, identifies the</p>	<p style="text-align: right;">Page 65</p> <p>1 deposition in this case that you did review?</p> <p>2 A. To the best of my recollection, yes.</p> <p>3 Q. And you go on in that line to say "...and</p> <p>4 calendar exhibits." Those were calendar</p> <p>5 exhibits to the deposition of Robin Morgan,</p> <p>6 correct?</p> <p>7 A. To the best of my understanding, yes.</p> <p>8 Q. Did you review the other exhibits to her</p> <p>9 deposition?</p> <p>10 A. Not that I recall.</p> <p>11 Q. So all that you do recall is reviewing the</p> <p>12 calendar exhibits along with her transcript?</p> <p>13 A. Yes.</p> <p>14 Q. Did you review Gaskin's deposition --</p> <p>15 Mr. Gaskin's deposition transcript from last</p> <p>16 week?</p> <p>17 A. It was sent to me, and I read parts of it.</p> <p>18 Q. Do you recall anything in particular that</p> <p>19 you read?</p> <p>20 A. Not particularly.</p> <p>21 Q. Anything surprise you from the transcript?</p> <p>22 A. No.</p> <p>23 Q. Anything from the transcript change in any</p> <p>24 way any of the opinions you hold in the case?</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 66</p> <p>1 Q. The only University of Delaware document 2 that I see listed here is in the -- I think by 3 my count it's the sixth line, the 4 defendant's -- sorry, Defendant's Tuition Data. 5 Do you see that? 6 A. I'm going to disagree with the preamble to 7 the question, but I do see the line in 8 question. 9 Q. Okay. So let me ask you two questions. 10 That is, to your understanding, a document that 11 came from whom? 12 A. We're talking about the defendant's 13 answers? 14 Q. No, sir. The one below that. 15 A. The tuition data? 16 Q. Yes. 17 A. To the best of my understanding, that 18 would have been data produced by U Delaware. 19 Q. Okay. And I said that from my review that 20 looked like the only document from the 21 University of Delaware that you reviewed, and I 22 think you said you disagree with that. Tell me 23 why. 24 A. I think the calendars that are exhibits to 25 the deposition of Robin Morgan were University</p>	<p style="text-align: right;">Page 68</p> <p>1 A. I believe I have seen whatever is the most 2 recent data as well as information as it 3 related to the time period in question. 4 Q. Did you visit the website yourself, or 5 were you sent excerpts? 6 A. I looked at the website myself. 7 Q. Do you recall when approximately? 8 A. My guess is that would have taken place in 9 the month of June of this year. 10 Q. You also list here Collegefactual.com. 11 What do you recall looking at on that website? 12 A. I think tuition information. 13 Q. For which school or schools? 14 A. A number of the universities that are listed 15 in the Gaskin conjoint. 16 Q. Why were you looking for tuition 17 information for those schools? 18 A. That relates to the conversation that I 19 had with Mr. Gaskin about using market-based 20 tuition price points within the survey, and 21 that those price points are reflective both of 22 University of Delaware and other schools that 23 are included in the survey. 24 Q. You list here Delawareonline. What do you 25 recall -- sorry. Let me back up.</p>
<p style="text-align: right;">Page 67</p> <p>1 documents, and this is a semantic issue, but in 2 some ways I would view the defendant's answers 3 as having come from the University as well. 4 Q. Fair enough. Other than those, any 5 other -- any University documents that you 6 reviewed? 7 A. Sorry. I'm just eyeballing the list very 8 quickly here. I had also looked at the 9 University website that's down on the last page 10 of the exhibit. I think beyond that those are 11 probably the documents from the University that 12 I have reviewed at least to this point as it 13 relates to this case. 14 Q. Okay. You did not review, am I correct, 15 the plaintiffs' interrogatory responses? 16 A. I don't believe so, no. 17 Q. You just mentioned that on the last page 18 of this exhibit there are, I think, six 19 websites listed, I think. What do you recall 20 reviewing from the University of Delaware's 21 website? 22 A. Things relating to tuition, calendar and 23 other things as they are presented to students 24 on the website. 25 Q. Do you know from which year?</p>	<p style="text-align: right;">Page 69</p> <p>1 College Factual, that was a website that 2 you visited yourself, you were not sent 3 excerpts? 4 A. All of the websites here are things that I 5 viewed in person. I was not sent any website 6 excerpts. 7 Q. Thank you. Delawareonline, what do you 8 recall viewing yourself? 9 A. I don't have a precise recollection of 10 what I saw on that particular website. 11 Q. Do you know what you were looking for? 12 A. The largest category of information that I 13 was seeking related to the market pricing. So 14 if I had to hazard a guess, that would be what 15 I would have been looking for there. 16 Q. NCSU.edu is the next website. What do you 17 recall looking at there? 18 A. Again, my best recollection would be 19 tuition data. 20 Q. How about for USMD.edu? 21 A. Same. 22 Q. And then same question for Usnews.com. 23 A. Same answer. 24 Q. All right. Do you know how many 25 undergraduate students were enrolled at the</p>

<p style="text-align: right;">Page 78</p> <p>1 A. I think you asked that or something</p> <p>2 similar, and my answer is there may very well</p> <p>3 be data that would show that, but as I sit here</p> <p>4 today I don't have that statistic memorized.</p> <p>5 Q. Why do you believe that's not important to</p> <p>6 calculate as part of your number?</p> <p>7 A. Again, because I can remove the aid in the</p> <p>8 aggregate as I have done, the fraction of</p> <p>9 students that are on aid wouldn't change the</p> <p>10 aggregate amount of tuition that is due as</p> <p>11 damages should plaintiffs prevail on the merits</p> <p>12 in this case.</p> <p>13 Q. Do you have a view as to whether or not</p> <p>14 that should be taken into account in terms of,</p> <p>15 assuming plaintiffs are successful, what</p> <p>16 dollars would be owed to individual students?</p> <p>17 A. I'm not offering an opinion about how much</p> <p>18 any one person should receive as part of claims</p> <p>19 administration with the one caveat that how the</p> <p>20 funds are distributed to individual students</p> <p>21 does not change the aggregate amount of</p> <p>22 class-wide harm that is calculated in this</p> <p>23 case.</p> <p>24 Q. Do you have a -- I understand what you</p> <p>25 just said, and I appreciate it. Do you have a</p>	<p style="text-align: right;">Page 80</p> <p>1 A. I believe you have the calculus correct.</p> <p>2 Q. Okay. And am I correct that that's how</p> <p>3 you get there, right, you take the 55 from the</p> <p>4 22 and you get to about 165, 166?</p> <p>5 A. That's right.</p> <p>6 Q. Okay. Do you know if the University</p> <p>7 provided online courses prior to the onset of</p> <p>8 COVID-19?</p> <p>9 A. It's my understanding that that was an</p> <p>10 option at least under certain circumstances.</p> <p>11 Q. Do you have any familiarity with the</p> <p>12 nature of those courses, how many -- how many</p> <p>13 students were enrolled?</p> <p>14 A. Certainly not memorized.</p> <p>15 Q. Have you seen any information to that</p> <p>16 effect?</p> <p>17 A. I don't recall.</p> <p>18 Q. Do you know what was charged for those</p> <p>19 online courses that were offered prior to</p> <p>20 spring of 2020?</p> <p>21 A. Similar answer. I don't have that data</p> <p>22 memorized.</p> <p>23 Q. Do you know whether any of the plaintiffs</p> <p>24 were enrolled in online courses prior to spring</p> <p>25 2020?</p>
<p style="text-align: right;">Page 79</p> <p>1 view as to whether or not financial aid would</p> <p>2 come into play at that stage?</p> <p>3 A. At this point, I have not been asked to</p> <p>4 give advice to the Court on how to conduct</p> <p>5 claims administration, so I'm not offering an</p> <p>6 opinion about that.</p> <p>7 Q. Do you know whether the individual</p> <p>8 plaintiffs received financial aid for spring of</p> <p>9 2020?</p> <p>10 A. Again, that's a data point that I might</p> <p>11 have known at one point, but I would need to</p> <p>12 refresh my recollection if you need an answer</p> <p>13 to that question.</p> <p>14 Q. Am I correct, though, that you did not</p> <p>15 review their individual billing statements?</p> <p>16 A. Because I have this aggregate financial</p> <p>17 statement, I did not need to look at individual</p> <p>18 billing statements, including for the named</p> <p>19 plaintiffs, and did not do so.</p> <p>20 Q. All right. After accounting for the two</p> <p>21 numbers we just discussed, you subtract one</p> <p>22 from the other with math that even I can do,</p> <p>23 and you get to a net tuition paid by</p> <p>24 undergraduate students of just under</p> <p>25 \$166 million, right?</p>	<p style="text-align: right;">Page 81</p> <p>1 A. I don't have a specific recollection of</p> <p>2 that one way or the other.</p> <p>3 Q. You did not review the University of</p> <p>4 Delaware's budget, correct?</p> <p>5 A. Not that I can recall.</p> <p>6 Q. You did not review its year-end financials</p> <p>7 for 2020 or indeed any year, correct?</p> <p>8 A. Same answer.</p> <p>9 Q. Did not review any of the University's</p> <p>10 budget projections for any period of time,</p> <p>11 correct?</p> <p>12 A. I don't recall doing that, no.</p> <p>13 Q. Is it fair to say that you were, for</p> <p>14 purposes of your calculations, told to assume</p> <p>15 that the allegations in the Complaint were</p> <p>16 true?</p> <p>17 A. I don't know if that was told to me, but</p> <p>18 assuming that defendant will be found liable</p> <p>19 for its allegedly harmful acts is a starting</p> <p>20 point for most calculations of damages as set</p> <p>21 forth in the Reference Manual on Scientific</p> <p>22 Evidence as it relates to damages</p> <p>23 quantification, and I am assuming for purposes</p> <p>24 of my calculations that plaintiffs will prevail</p> <p>25 on the merits of their case.</p>

<p style="text-align: right;">Page 90</p> <p>1 Q. Am I correct that your analysis does not 2 distinguish in any way between those students 3 who paid in-state tuition and those who paid 4 out-of-state tuition, just you calculated it on 5 an aggregate basis? 6 A. I think that question could potentially be 7 misinterpreted. I do differentiate to the 8 extent that the underlying data reflects that 9 some people paid more and other people paid 10 less, but I do not go person by person as part 11 of my calculations and identify whether they 12 are in state or out of state. 13 Q. And your report does not conclude any 14 calculation aggregating, for example, the total 15 amount of in-state tuition or the total amount 16 of out-of-state tuition, right? 17 A. I have not set forth that calculation, 18 though. I suppose it would be possible to make 19 it. 20 Q. But those breakdowns, if you will, are not 21 a feature of your overall calculation, correct? 22 A. Because I was asked to calculate 23 class-wide damages in the aggregate, I did not 24 present breakdowns of the aggregate class-wide 25 amounts.</p>	<p style="text-align: right;">Page 92</p> <p>1 A. Again, I describe two types of harm that 2 are alleged in this case. One is that students 3 were not given the promised number of days as 4 part of their semester, and that there's a 5 financial harm that stems from having paid for 6 more days than were received. And similarly, 7 it's alleged that people were forced into 8 taking classes online and without regular 9 access to the campus, and that that represents 10 a change in the value from what had been 11 bargained for at the time of enrollment, which 12 would have involved the choice to take classes 13 in person and with access to the campus, and 14 the -- there is financial harm that comes with 15 the reduction in value from the removal of that 16 choice and those services. 17 Q. Is it your view that every student 18 suffered the same alleged loss? 19 A. I think -- I want to be careful because 20 I'm not offering opinions about individuals' 21 damages. What I would say is that every 22 individual has suffered a similar type of 23 damage, but that based on what they have paid, 24 the amounts that derive from each student as it 25 rolls up into the aggregate amount may be a</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Continuing in that same paragraph but now 2 on the top of the next page, about the third 3 line down it says that, "Classes moved online 4 and campus services ceased being provided." 5 Do you see that? 6 A. Yes. 7 Q. Similar question to before: Do you know 8 what campus services continued to be offered by 9 the University of Delaware in the spring of 10 2020 after the COVID onset? 11 A. I could be faulted for not citing it over 12 and over again for every sentence in this 13 paragraph, but, again, this is intended to be a 14 recitation of what plaintiffs say, not an 15 opinion from me. 16 Q. And understood. Simpler question, I 17 think: Did you have any personal knowledge 18 about what campus services continued to be 19 offered? 20 A. Anything that I would know about that 21 would have come from reading the Complaint. I 22 don't have that memorized as I sit here today. 23 Q. How would you describe the alleged loss 24 suffered by undergraduate students in spring of 25 2020?</p>	<p style="text-align: right;">Page 93</p> <p>1 different amount of money. 2 Q. I'm going to ask you a slightly different 3 question then. Is it your view that every 4 student -- every undergraduate student at the 5 University in the spring of 2020 suffered a 6 loss? 7 A. I think every student suffered some kind 8 of loss in the sense that they missed days and 9 didn't have the same opportunities that were 10 bargained for, whether that translates to a 11 legal entitlement, that I'm not offering an 12 opinion about. 13 Q. What in your view -- you just used the 14 word "bargained for." What do you believe that 15 students bargain for when they pay tuition? 16 A. The ability to have classes on an 17 in-person basis and to have regular access to 18 the campus and facilities. 19 Q. Do they bargain for that or academic 20 credit? 21 A. In some way those things are related, and 22 in some ways those things could be different. 23 Q. Might some students have valued academic 24 credit over the things you just described? 25 A. I can't really testify about what any</p>

<p style="text-align: right;">Page 98</p> <p>1 A. It's my understanding that those seven</p> <p>2 days were not made up.</p> <p>3 Q. What was not made up, the actual day or</p> <p>4 the work that would have been and subjects that</p> <p>5 would have been covered during those days?</p> <p>6 A. Again, I'm talking about the days.</p> <p>7 Q. Yeah. But is it days that matters or the</p> <p>8 content that would be covered during those</p> <p>9 days?</p> <p>10 A. Again, it's my understanding that</p> <p>11 plaintiffs allege that it's the days that are</p> <p>12 missed.</p> <p>13 Q. And your opinion calculates those days</p> <p>14 regardless of the content that would have been</p> <p>15 covered during those days or what might have</p> <p>16 been covered in the latter part of the</p> <p>17 semester, correct?</p> <p>18 A. Yeah, it's my understanding that there's a</p> <p>19 single charge for tuition for the semester and</p> <p>20 that students don't pay based on what's going</p> <p>21 to happen on a particular day, and so my</p> <p>22 damages framework takes that particular view to</p> <p>23 plaintiffs' allegations in this case.</p> <p>24 Q. Do you know the breakdown of how many</p> <p>25 student undergraduate students in spring 2020</p>	<p style="text-align: right;">Page 100</p> <p>1 out there and in the aggregate would have a</p> <p>2 marketplace impact, that is accounted for by</p> <p>3 the Gaskin survey.</p> <p>4 Q. What about those students who prior to</p> <p>5 COVID's emergence were already enrolled in</p> <p>6 online courses and not receiving a discount?</p> <p>7 A. Those students also would have been better</p> <p>8 off if the tuition had been lower in the way</p> <p>9 that Mr. Gaskin has calculated, but those</p> <p>10 people also conceptually are in a different</p> <p>11 position because even if they chose an online</p> <p>12 class, that was a choice that was available to</p> <p>13 them as opposed to the latter portion of the</p> <p>14 semester at issue when that choice was taken</p> <p>15 away from folks.</p> <p>16 Q. Do you know whether any of the plaintiffs</p> <p>17 themselves were enrolled in an online course?</p> <p>18 A. Again, I may have known that at one point,</p> <p>19 but as I sit here today I don't have a</p> <p>20 recollection one way or the other.</p> <p>21 Q. Do you have an understanding of the</p> <p>22 instructional method used by the University of</p> <p>23 Delaware in the fall of 2020?</p> <p>24 A. My recollection is that at least part of</p> <p>25 that semester included online-only classes.</p>
<p style="text-align: right;">Page 99</p> <p>1 were full-time as opposed to part-time?</p> <p>2 A. Again, that is part of the calculus in the</p> <p>3 sense that that's reflected in the tuition</p> <p>4 amounts, but I don't know off the top of my</p> <p>5 head what the breakdown is.</p> <p>6 Q. Would you agree that at least some</p> <p>7 University of Delaware students were pleased</p> <p>8 that the University of Delaware transitioned to</p> <p>9 online learning in spring of 2020 since the</p> <p>10 only alternative was to cease instruction?</p> <p>11 A. I'm not here to offer an opinion about</p> <p>12 people's subjective views other than the fact</p> <p>13 that those types of subjective views at least</p> <p>14 individually don't impact the tuition that</p> <p>15 people pay, and that those folks would have</p> <p>16 been economically better off if they had paid a</p> <p>17 lower tuition amount even if they were</p> <p>18 otherwise happy with attending classes remotely</p> <p>19 as opposed to not having classes at all.</p> <p>20 Q. So the individual student's, say, academic</p> <p>21 success or comfort level with online learning</p> <p>22 would not affect in any way your opinion?</p> <p>23 A. Any one person's subjective views on those</p> <p>24 things do not impact the damages calculus. To</p> <p>25 the extent that there are those types of views</p>	<p style="text-align: right;">Page 101</p> <p>1 Q. Do you know what tuition was charged?</p> <p>2 A. I believe I've been told that it was the</p> <p>3 same as it was for the spring of 2020.</p> <p>4 Q. Do you know how many students enrolled in</p> <p>5 spring 2020 also reenrolled in the fall of</p> <p>6 2020?</p> <p>7 A. That may have been mentioned to me, but I</p> <p>8 don't recall off the top of my head.</p> <p>9 Q. Do you recall an approximate percentage?</p> <p>10 A. Maybe it was 85 percent, but I wouldn't</p> <p>11 swear to that.</p> <p>12 Q. Why is that an appropriate measure of how</p> <p>13 students valued online education rather than a</p> <p>14 conjoint survey?</p> <p>15 A. There are a number of reasons that the</p> <p>16 fall of 2020 would represent an</p> <p>17 apples-to-oranges calculation in the way that</p> <p>18 you have suggested. And because the analysis</p> <p>19 is confounded by some of the factors, which</p> <p>20 I'll enumerate in a moment, it's not</p> <p>21 appropriate to use that as a way to determine</p> <p>22 the damages in this case. Some of the</p> <p>23 differences include that that particular</p> <p>24 bargain was struck when COVID was known,</p> <p>25 whereas in spring of 2020 that was not the</p>

<p style="text-align: right;">Page 106</p> <p>1 A. I believe Mr. Gaskin has indicated that</p> <p>2 the results are statistically significant. I</p> <p>3 don't have a personal opinion about whether</p> <p>4 they are or are not.</p> <p>5 Q. And just to be clear, academic success is</p> <p>6 not a factor in your analysis at all, correct?</p> <p>7 A. How do you mean?</p> <p>8 Q. Well, if a student did better academically</p> <p>9 in online courses than in in-person courses,</p> <p>10 for example, your calculation still treats that</p> <p>11 student as being harmed the same as others,</p> <p>12 correct?</p> <p>13 A. Well, I think Mr. Gaskin's sample would</p> <p>14 kind of include the fact that there are people</p> <p>15 that, assuming your predicate is true, are out</p> <p>16 there, but those people that did better with</p> <p>17 online classes would still have been</p> <p>18 economically better off paying the lower</p> <p>19 market-based tuition that has been determined</p> <p>20 that would be in existence had folks known the</p> <p>21 truth at the time the bargain was struck.</p> <p>22 Q. It sounds like a very circular view,</p> <p>23 because, of course, everybody is always better</p> <p>24 off paying less, so how does that actually help</p> <p>25 inform us in this case? You said it a couple</p>	<p style="text-align: right;">Page 108</p> <p>1 A. Okay. But the other conclusion that we</p> <p>2 have is that those folks would have paid less.</p> <p>3 So we agree that people are better off if</p> <p>4 they're paying less. Mr. Gaskin and I have</p> <p>5 shown that folks would have paid less. And so</p> <p>6 when you ask a question what about some person</p> <p>7 that was happy about the classes or that</p> <p>8 graduated, I'm saying that person, per the</p> <p>9 precepts that we just talked about, would have</p> <p>10 been better off paying less and would have paid</p> <p>11 less based on the evidence that Mr. Gaskin has</p> <p>12 provided.</p> <p>13 Q. Have you ever seen a conjoint analysis</p> <p>14 that concluded people would gladly pay more</p> <p>15 rather than less?</p> <p>16 A. Oh, sure. People would have paid more for</p> <p>17 various features of colleges and universities,</p> <p>18 totally. I have not seen somebody suggest that</p> <p>19 on balance the market price would have been the</p> <p>20 same or higher when you take away people's</p> <p>21 choice to have in-person classes and access to</p> <p>22 the campus.</p> <p>23 Q. And you haven't seen the conjoint used, as</p> <p>24 we covered earlier, in this context outside of</p> <p>25 the Ohio cases and this case, correct?</p>
<p style="text-align: right;">Page 107</p> <p>1 of times.</p> <p>2 A. Right. It gets back to this confluence</p> <p>3 of things that you keep mentioning that are</p> <p>4 sort of subjective or individualized and the</p> <p>5 fact that folks, as you said, and I'm glad you</p> <p>6 agree, would just be better off if the market</p> <p>7 price would be less. And overall, Mr. Gaskin</p> <p>8 has demonstrated that the market price for</p> <p>9 tuition would have been less had people known</p> <p>10 the truth at the time a bargain was struck.</p> <p>11 And so even if a person graduated, even if they</p> <p>12 were happy with how things went, I'm just</p> <p>13 trying to remember the examples that you've</p> <p>14 given, even if they were academically</p> <p>15 successful, they still would be better off if</p> <p>16 they had paid the lower market tuition. And it</p> <p>17 is my opinion, based on what Mr. Gaskin has</p> <p>18 found, that those folks would have paid lower</p> <p>19 tuition even if they were ultimately satisfied</p> <p>20 with what they received.</p> <p>21 Q. Yeah. My agreement was on a different</p> <p>22 point, which is it doesn't strike me as</p> <p>23 scientific at all to say that people would like</p> <p>24 to pay less for something. Not sure I need any</p> <p>25 degrees to come up with that conclusion.</p>	<p style="text-align: right;">Page 109</p> <p>1 A. I believe the places where I have seen</p> <p>2 conjoint deployed for higher education include</p> <p>3 the Ohio cases and this case.</p> <p>4 Q. But you haven't seen it used to purport</p> <p>5 the value of the lost educational opportunity</p> <p>6 for modalities other than in those cases,</p> <p>7 correct?</p> <p>8 A. If I've seen that someplace else, I don't</p> <p>9 have a recollection.</p> <p>10 Q. And Mr. Gaskin's survey does not account</p> <p>11 for COVID-19 in spring of 2020, correct, in</p> <p>12 fact, it asks the respondents to ignore it</p> <p>13 completely?</p> <p>14 A. I was going to say there is a treatment of</p> <p>15 COVID, and that is that people are asked to</p> <p>16 ignore it.</p> <p>17 Q. Actually, that's --</p> <p>18 A. That's my understanding.</p> <p>19 Q. Okay. Got it. So they're told to ignore</p> <p>20 it. You believe that's appropriate in this</p> <p>21 instance?</p> <p>22 A. Given that we are calculating damages as</p> <p>23 of the time and point of sale, which occurred</p> <p>24 before COVID, yes, I believe that's appropriate</p> <p>25 in this particular instance.</p>

<p style="text-align: right;">Page 122</p> <p>1 if you look at the conjoint literature, there 2 are plenty of statistics that are used to 3 objectively evaluate the reliability of the 4 conjoint such as, for example, the hit rate or 5 the root likelihood. But that margin of error, 6 which is typically used on sort of single up or 7 down vote type of questions, like, how many 8 people would vote for Donald Trump tomorrow, 9 it'll be X percent plus or minus some margin of 10 error, that's not the way the conjoint results 11 are typically presented. 12 Q. The survey could have informed survey 13 respondents that online courses were only 14 offered for part of the semester and were 15 necessary as part of a public health and safety 16 measure, right? 17 A. I don't know that that would be the proper 18 way to do things, but as a technical matter the 19 surveys are fairly flexible and could be 20 designed to do that. 21 Q. Why shouldn't that have been included as a 22 question? 23 A. Well, again, there's the time and point of 24 sale issue that relates to the public health 25 themes, and that at the time and point of sale</p>	<p style="text-align: right;">Page 124</p> <p>1 A. I would need to go back and look at the 2 Gaskin report, but I believe he uses hit rates 3 as a way of evaluating the reliability of the 4 conjoint survey. 5 Q. Did you perform any of your own review or 6 analysis to confirm the validity of the 7 statistical result that he achieved? 8 A. Based on the fact that Mr. Gaskin ran 9 those tests himself, no, I did not reproduce 10 them. 11 Q. Do you agree that there's a difference 12 between the market value of a product and the 13 value of various product attributes? 14 A. I think those things are related, but they 15 may or may not be different depending upon what 16 we're talking about. 17 Q. And a conjoint survey does not measure the 18 value of all the attributes of a product, 19 right, only those selected by the person 20 designing the survey? 21 A. I would agree that if you want to know the 22 value of a particular attribute, it must be 23 included in the survey, but there are other 24 data points that can be used to move in one 25 direction or another to understand product</p>
<p style="text-align: right;">Page 123</p> <p>1 at issue for spring 2020, that information 2 would not have been in the real world and 3 therefore would not be appropriate to model in 4 the but-for world. 5 Q. Turning back to the margin of error. 6 Isn't it important to know the margin of error 7 to rely on it for reasonable economic certainty 8 in your report? 9 A. Because there are other ways of evaluating 10 conjoint surveys and where those other methods 11 are the commonly accepted ways of evaluating 12 them, no, I do not believe you need to know the 13 margin of error to evaluate the economic 14 reasonableness of a conjoint survey. 15 Q. And indeed you -- just to be clear, you 16 don't know of one here, correct? 17 A. Because there are other ways of evaluating 18 the conjoint survey that have shown that it is 19 reliable, I have not sought to use an uncommon 20 way of evaluating conjoint results, namely the 21 margin of error. 22 Q. And what were the ways -- and apologies if 23 you had said this a bit ago. What were the 24 ways that you used here instead of margin of 25 error?</p>	<p style="text-align: right;">Page 125</p> <p>1 valuation, especially in a case like this where 2 we try to hold various factors constant. So, 3 for example, if we know what the stated tuition 4 is, we can use that as a baseline to understand 5 whether or not value is added or subtracted, 6 for example, by removing the ability to choose 7 in-person classes and have access to the 8 campus. And you need not know all of the other 9 attributes or their particular values, because 10 using the starting tuition amount and the 11 change attributable to the one attribute, we 12 can figure the remaining value for when 13 students no longer have the choice of in-person 14 classes. 15 Q. And who determined as between you and 16 Mr. Gaskin or AMS which specific attributes to 17 include in the survey conducted here? 18 A. As to market price and the general 19 attribute and level of interest, those were 20 developed between me and Mr. Gaskin. And when 21 I say "Mr. Gaskin," I say that generally. I 22 can't speak, since I don't have firsthand 23 knowledge, of how AMS contributed to 24 Mr. Gaskin's work except only at a very high 25 level. As to the other attributes, I would say</p>

<p style="text-align: right;">Page 126</p> <p>1 that fell to Mr. Gaskin. How that division of</p> <p>2 labor was laid out as between Mr. Gaskin and</p> <p>3 AMS, I can't speak to that.</p> <p>4 Q. Who selected the -- I'll call them for our</p> <p>5 purposes the competitor schools that were used</p> <p>6 in the survey?</p> <p>7 A. I would suggest Mr. Gaskin. But, again,</p> <p>8 as to the division of labor between Mr. Gaskin</p> <p>9 and his staff, I can't speak to that.</p> <p>10 Q. Is it fair to say from that that you did</p> <p>11 not identify which schools should be named as</p> <p>12 competitors in the survey?</p> <p>13 A. That's correct.</p> <p>14 Q. Did you have a view one way or the other?</p> <p>15 A. I did not have a view one way or the</p> <p>16 other.</p> <p>17 Q. Do you have a view as to which schools --</p> <p>18 whether the schools that were included are</p> <p>19 appropriate competitors?</p> <p>20 A. I have no opinion one way or the other.</p> <p>21 Q. You have reviewed Mr. Gaskin's report,</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. Do you agree with me that his analysis</p> <p>25 shows that there's a range of overpayment</p>	<p style="text-align: right;">Page 128</p> <p>1 now 1:19. Please continue.</p> <p>2 BY MR. TAYLOR:</p> <p>3 Q. Good afternoon, Mr. Weir. We're back</p> <p>4 after the lunch break. Let me go back to one</p> <p>5 of the phrases you used earlier. When I was</p> <p>6 asking you about fall of 2020 as a useful</p> <p>7 metric and you referred to that as apples and</p> <p>8 oranges compared to spring 2020, do you</p> <p>9 remember that phrase?</p> <p>10 A. Yes.</p> <p>11 Q. All right. Why is it that if students</p> <p>12 knew about COVID as they did, of course, in</p> <p>13 fall of '20 and still paid full tuition, that</p> <p>14 that isn't a common class-wide point of</p> <p>15 evidence of the market price that those</p> <p>16 students would be willing to pay?</p> <p>17 A. Again, we don't know what the tuition</p> <p>18 would have been absent that. We also don't</p> <p>19 know how the tuition would be if we were in a</p> <p>20 historical context where all of the students</p> <p>21 were enrolled instead of only some of the</p> <p>22 students reenrolling. There are a number of</p> <p>23 things, as I mentioned before, that I believe</p> <p>24 would confound that comparison and not make it</p> <p>25 an apt way to examine damages that relate to</p>
<p style="text-align: right;">Page 127</p> <p>1 percentages ranging from 15 percent to as high</p> <p>2 as 57 percent?</p> <p>3 A. I don't believe that's correct. But if</p> <p>4 you would like to point me at something, I'm</p> <p>5 happy to take a peek.</p> <p>6 Q. Do you -- if hypothetically that was</p> <p>7 correct, would you believe that is an</p> <p>8 appropriate calculation to a reasonable degree</p> <p>9 of economic certainty?</p> <p>10 A. If you're saying that following</p> <p>11 Mr. Gaskin's instructions could lead to many</p> <p>12 different answers, I would need you to clarify</p> <p>13 how that could be, because Mr. Gaskin has</p> <p>14 pretty explicit instructions that lead to only</p> <p>15 the determination of one answer, at least as I</p> <p>16 understand it.</p> <p>17 Q. All right. Okay.</p> <p>18 MR. TAYLOR: Why don't we take a</p> <p>19 break there, I guess -- what is it, 12:30? May</p> <p>20 be a good time for a lunch break.</p> <p>21 THE VIDEOGRAPHER: Off camera. The</p> <p>22 time is 12:26.</p> <p>23 (Off the record 12:26 to 1:19.)</p> <p>24 THE VIDEOGRAPHER: This begins media</p> <p>25 number 3 in today's deposition. The time is</p>	<p style="text-align: right;">Page 129</p> <p>1 the spring of 2020.</p> <p>2 Q. What percentage reenrollment would make it</p> <p>3 a more apt comparison?</p> <p>4 A. I mean, since we hold supply fixed as a</p> <p>5 matter of history, we would need a reenrollment</p> <p>6 of 100 percent to eliminate that as a</p> <p>7 potentially confounding factor. Now, as I</p> <p>8 mentioned before, there's potentially a way</p> <p>9 that you could control for that, but I have not</p> <p>10 attempted to build that model. Because we</p> <p>11 already have the conjoint, there's no need to</p> <p>12 do it.</p> <p>13 Q. And if -- I'm giving you an "if" because I</p> <p>14 know you don't know the amounts. But if the</p> <p>15 tuition was held the same in fall of 2020 from</p> <p>16 spring of 2020, why would that need to be</p> <p>17 adjusted as I think I understood your testimony</p> <p>18 a moment ago?</p> <p>19 A. Right. In most circumstances colleges and</p> <p>20 universities raise the tuition every year. And</p> <p>21 so when you have a year when it actually stays</p> <p>22 the same, that would be something that needs to</p> <p>23 be accounted for in terms of understanding of</p> <p>24 there being a potential reduction in value. If</p> <p>25 the tuition otherwise would have been higher</p>

<p style="text-align: right;">Page 154</p> <p>1 answers the question. There's no need to 2 mention it in the report because we have 3 accounted for it. And, again, I believe that 4 the conjoint appropriately provides a 5 percentage-based overpayment that is then 6 fairly applied to the amounts that people 7 actually paid. 8 Q. In paragraph 47 earlier today I asked you 9 about the numbers that are captured in that 10 paragraph, and we walked through each of those. 11 The gross tuition amount, do you agree that 12 that amount does not calculate what students 13 actually paid out of pocket? 14 A. I think it is the face amount that was 15 faced by all students, but that some students 16 as reflected by the fact that there's a lower 17 net number, at least in the aggregate, students 18 paid an amount that is less than the total 19 gross. 20 Q. And we might have covered this before, but 21 just so I'm clear, did -- the 55 million and 22 change that you deducted for undergraduate 23 student aid, do you know what is subsumed in 24 that category? 25 A. Again, there was voluminous underlying</p>	<p style="text-align: right;">Page 156</p> <p>1 an obligation to then refund, you know, the 4-H 2 club that gave them a third-party scholarship, 3 that seems well beyond the purview of 4 calculating the harm that was caused by 5 University of Delaware, and I would not change 6 my calculus to account for that in terms of 7 determining aggregate class-wide damages. 8 Q. That wasn't part of your analysis, 9 correct? 10 A. It was purposefully not part of my 11 analysis, because that would serve to 12 understate the harm caused by University of 13 Delaware. 14 Q. And nor did you take into account any of 15 the costs incurred by the University of 16 Delaware in spring 2020? 17 A. I object to the question both in its 18 characterization of my prior answer and in 19 terms of this particular question. There are 20 things that I've taken into account by 21 considering them and making a determination 22 about how to handle things. For example, I 23 made an active determination that the 24 third-party aid does not change the amount of 25 harm that University of Delaware has caused.</p>
<p style="text-align: right;">Page 155</p> <p>1 detail that I did review, but I don't have 2 memorized everything that fell into that 3 category. 4 Q. If for some reason that \$55 million number 5 did not include all third-party payments and 6 aid, then the net tuition number would be 7 overstated, correct? 8 A. Can you tell me what you mean by 9 "third-party aid"? 10 Q. Well, from any sources, aid that -- 11 amounts paid that were not paid by individual 12 students, if that's not subsumed in the 55 13 million, then the net tuition would be 14 overstated, right? 15 A. Not in terms of calculating the harm 16 caused by University of Delaware, no. 17 Q. That doesn't hinge on what amounts were 18 actually paid by students in your view? 19 A. It looks at the amount of money that the 20 University of Delaware took in by virtue of the 21 tuition amounts that it set and the value that 22 was not received by those students as a result 23 of the switch to online-only classes. Now, if 24 we talk about, you know, delivering amounts of 25 money back to students whether or not they have</p>	<p style="text-align: right;">Page 157</p> <p>1 Similarly, I did look at the concept of costs 2 as they might have influenced prices and made 3 the determination that by using the real-world, 4 market-based prices, we can account for that 5 supply side factor in our analysis and hold it 6 constant in the real and but-for worlds. That 7 is the only manner in which that particular 8 issue needs to be addressed given the facts and 9 circumstances of this case. 10 Q. I think I asked a simpler question. You 11 did not account for the costs incurred by the 12 University of Delaware in your calculation, 13 correct? 14 MR. ARISOHN: Objection, asked and 15 answered. 16 THE WITNESS: I completely disagree 17 for all of the reasons I just set forth in that 18 prior answer. 19 BY MR. TAYLOR: 20 Q. You didn't calculate the cost, did you? 21 A. I have done an analysis that shows that to 22 the extent costs impacted the prices that were 23 set for tuition, that our real-world, 24 market-based prices account for that and hold 25 those conditions from a supply side fixed as in</p>

<p style="text-align: right;">Page 158</p> <p>1 the real world and the but-for world and our 2 analysis and account and control for them. 3 Q. Yeah. You don't know what costs were 4 incurred by the University as a result of 5 COVID-19, correct? 6 A. As a memory quiz, no, I do not have that 7 information memorized. 8 Q. No, I'm not asking as a memory quiz. Did 9 you include that as part of your report or 10 calculation? 11 A. To the extent that any such costs 12 influenced the tuition that was set by 13 University of Delaware, yes, I have included 14 that in the use of the range of real-world, 15 market-based prices. 16 Q. Well, it couldn't have been included in 17 the cost set because you used the tuition 18 amount for the school year before COVID 19 erupted, right? 20 A. I agree with you that COVID was not an 21 element at the time the bargain was struck. 22 Q. COVID costs could not have been then an 23 element either, right? 24 A. They were not in existence at the time of 25 the bargain.</p>	<p style="text-align: right;">Page 160</p> <p>1 A. Again, I understand that there is 2 voluminous data that speaks to that, but I 3 don't have that memorized here today. 4 Q. Do you believe you captured all aid in 5 that number? 6 A. Based on what was represented to me, it 7 reflects all of the aid provided by the 8 University of Delaware. 9 Q. And, again, just to be clear, represented 10 to you by plaintiffs' counsel? 11 A. Correct. 12 Q. Paragraph 33 of your report, you have a 13 phrase in there that says "...it would be 14 antithetical to the concept of class definition 15 to suggest that the quantity supplied be 16 anything other than the actual number of 17 students enrolled by Defendant." 18 Do you see that? 19 A. Yes. 20 Q. Okay. Maybe you already did, but tell me 21 what that means. 22 A. There are two ways that you can look at 23 it, but it's the same idea. And yes, we have 24 talked about it already today. If I'm trying 25 to determine the amount of value that class</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. So then they could not have been part of 2 your calculation, correct? 3 A. Like I said, to the extent that anything 4 had an impact, it's controlled by the use of 5 the real-world, market-based prices. If you're 6 saying that it didn't have an impact on prices 7 in the real world, then it didn't have an 8 impact on prices in the but-for world that I 9 model holding all of that constant. 10 Q. I don't know what any of that means. I'm 11 just saying that you used the tuition amount at 12 the beginning of the school year and obviously 13 there weren't known COVID costs at that time, 14 right? 15 A. Again, we are modeling damages at the time 16 and point of first sale where that is where the 17 damages occur. I agree with you that COVID was 18 not extant at that time and that all costs of 19 any kind, to the extent that they did impact 20 prices, are controlled for through the use of 21 the range of real-world, market-based prices in 22 the conjoint. 23 Q. Do you know in the \$55 million and change 24 in paragraph 47 that you deducted whether that 25 is institutional aid or other aid?</p>	<p style="text-align: right;">Page 161</p> <p>1 members did or didn't receive, I cannot run a 2 model that shows that, for example, some class 3 members never purchased at all. In fact, if 4 you just do the logical conclusion, the only 5 way that a student could receive value from the 6 University of Delaware was to be enrolled and 7 be a student at the University of Delaware. 8 And if you run a model that says that ten 9 percent or 25 percent or 50 percent of the 10 people wouldn't be enrolled, then those people 11 could not possibly receive any value from the 12 University. And I'm not going to try and 13 suggest that anyone here is due a full refund. 14 They're only due 15 percent on the 15 conjoint-based model. And that's because those 16 people did receive some value while they were 17 at the University, and the conjoint controls 18 for that. But you can't run a model that says 19 those people must have received some value if 20 they don't receive anything in the model. It 21 doesn't make sense. 22 Q. And when you are calculating real-world 23 prices, is it important to take into account 24 federal aid that's received? 25 A. No. Federal aid is just a loan that</p>

<p style="text-align: right;">Page 182</p> <p>1 that people might consider that were not 2 included in the Gaskin conjoint, because he has 3 followed the principles of conjoint design that 4 would tell you not to put the kitchen sink into 5 the survey design. 6 Q. Do you agree that there are more factors 7 that are taken into account for why someone 8 might select a university than to select a car 9 in your example? 10 A. Do I think there are more factors about a 11 university than in a car? I'm not sure that 12 that's generalizable. 13 Q. You don't agree that there are more 14 factors that come into play as to why someone 15 selects a university as opposed to why someone 16 picks a car? 17 A. I don't believe there's a generalizable 18 answer to that question. 19 Q. How about in order of magnitude, you're 20 comparing the car situation to the university 21 situation, are cars frequently sold at 22 50 percent list price? 23 A. They can be. 24 Q. Are they frequently sold at that list 25 price?</p>	<p style="text-align: right;">Page 184</p> <p>1 Q. Well, that's an offset for a payment, 2 that's not what they're actually charged, 3 right? 4 A. Oh, your words, not mine, but okay. Yes, 5 they can be offsets for payment. 6 Q. Right. So my question to you is that in 7 the university context sometimes a student is 8 charged nothing. Have you ever seen a 9 situation where a car is -- where a consumer is 10 charged zero for a car? 11 A. I have seen datasets that show that people 12 are charged zero for cars. 13 Q. And that's what you just described in 14 terms of a trade-in? 15 A. No. I mean, normally when I study cars I 16 get a spreadsheet that has 300,000 transactions 17 in it, so I don't know the facts and 18 circumstances behind every one. 19 Q. But it's your testimony that you've seen 20 situations where a consumer is charged zero for 21 a car? 22 A. That would be what is apparent in the 23 data, yes. 24 Q. Are you familiar with the University's 25 academic calendar for spring of 2020?</p>
<p style="text-align: right;">Page 183</p> <p>1 A. Again, there's no generalizable data that 2 would say one way or the other. That's a 3 circumstance that may or may not happen given 4 any particular automobile or set of 5 circumstances. 6 Q. Do you know what discount ordinarily 7 applies in the automobile context? 8 A. There's no one discount. 9 Q. Do you know what discount ordinarily 10 applies in a university context for tuition? 11 A. Again, I would say there is no single 12 discount. 13 Q. Is it the case that sometimes students 14 receive free tuition, free rides to go to a 15 university? 16 A. I have heard of that happening, yes. 17 Q. And do you know of any situations where 18 someone gets a free car? 19 A. There's certainly ways in which the amount 20 that they pay has been reduced to zero. I've 21 seen that, yes. 22 Q. In what context? 23 A. They may have a trade-in or a dealer 24 credit or financing or some combination of all 25 of those things.</p>	<p style="text-align: right;">Page 185</p> <p>1 A. I have looked at two versions of the 2 calendar that are referenced as being attached 3 to the Robin Morgan deposition. Those are the 4 things that I'm familiar with as it relates to 5 the calendar from this case. 6 Q. And in your report at the bottom of 7 page 11 beginning with page -- sorry, 8 paragraph 44, you say that you determined there 9 were 74 academic days slated for the spring 10 2020 semester, is that right? 11 A. Yes. 12 Q. How did you go about determining there 13 were 74 academic days slated for that semester? 14 A. I looked at the calendar and understood 15 the number of weeks that were shown in the 16 calendar and subtracted from the total of weeks 17 times five days, things like -- sorry. I 18 subtracted from the total number of days 19 weekends, spring break days, days that were 20 not -- days that were not full weeks like at 21 the end where I think it ends on a Thursday, 22 those sorts of things. 23 Q. Is that calculation, the tabulation you 24 just described, captured anywhere? 25 A. The counts should be reflected in the</p>

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1 MR. ARISOHN: Nothing from
 2 plaintiffs.
 3 MR. TAYLOR: I take it that you
 4 don't have any questions today?
 5 MR. ARISOHN: I do not.
 6 THE VIDEOGRAPHER: We are off the
 7 record at 3:31 p.m., and this concludes today's
 8 testimony given by Colin Weir. Total number of
 9 media units used was four and will be retained
 10 by Veritext.
 11 (Deposition concluded at 3:31 p.m.)
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1 REPORTER'S CERTIFICATE
 2
 3 STATE OF MINNESOTA)
 4) ss.
 5 COUNTY OF HENNEPIN)
 6
 7 I hereby certify that I reported the remote
 8 deposition of Colin B. Weir on Friday,
 9 August 19, 2022 in Maple Grove, Minnesota, and
 10 that the witness was by me first duly sworn to
 11 tell the whole truth;
 12 That the testimony was transcribed by me
 13 and is a true record of the testimony of the
 14 witness;
 15 That the cost of the original has been
 16 charged to the party who noticed the deposition,
 17 and that all parties who ordered copies have been
 18 charged at the same rate for such copies;
 19
 20 That I am not a relative or employee or
 21 attorney or counsel of any of the parties, or a
 22 relative or employee of such attorney or counsel;
 23
 24 That I am not financially interested in the
 25 action and have no contract with the parties,
 attorneys, or persons with an interest in the
 action that affects or has a substantial tendency
 to affect my impartiality;
 That the right to read and sign the
 deposition transcript by the witness was reserved.
 WITNESS MY HAND AND SEAL THIS 31st day of
 August, 2022.
 Dana Andrus
 Notary Public, Hennepin County, MN
 My commission expires 1/31/2025

Page 212

1 Joshua D. Arisohn, Esquire
 2 jarisohn@bursor.com
 3 August 31, 2022
 4 RE: Ninivaggi, Penny Et Al v. University Of Delaware
 5 8/19/2022, Colin B Weir (#5363898)
 6 The above-referenced transcript is available for
 7 review.
 8 Within the applicable timeframe, the witness should
 9 read the testimony to verify its accuracy. If there are
 10 any changes, the witness should note those with the
 11 reason, on the attached Errata Sheet.
 12 The witness should sign the Acknowledgment of
 13 Deponent and Errata and return to the deposing attorney.
 14 Copies should be sent to all counsel, and to Veritext at
 15 cs-midatlantic@veritext.com
 16
 17 Return completed errata within 30 days from
 18 receipt of testimony.
 19 If the witness fails to do so within the time
 20 allotted, the transcript may be used as if signed.
 21
 22 Yours,
 23 Veritext Legal Solutions
 24
 25

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1 Ninivaggi, Penny Et Al v. University Of Delaware
 2 Colin B Weir (#5363898)
 3 E R R A T A S H E E T
 4 PAGE____ LINE____ CHANGE_____
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 21 REASON_____
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 23 _____
 24 Colin B Weir Date
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1 Ninivaggi, Penny Et Al v. University Of Delaware

2 Colin B Weir (#5363898)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Colin B Weir, do hereby declare that I

5 have read the foregoing transcript, I have made any

6 corrections, additions, or changes I deemed necessary as

7 noted above to be appended hereto, and that the same is

8 a true, correct and complete transcript of the testimony

9 given by me.

10

11 _____

12 Colin B Weir Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 _____ DAY OF _____, 20____.

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20 NOTARY PUBLIC

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55 (Page 214)

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EXHIBIT 3

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF DELAWARE**

PENNY NINIVAGGI et al., individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

UNIVERSITY OF DELAWARE,

Defendant.

Civil Action No. 20-cv-1478-SB

HANNAH RUSSO, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

UNIVERSITY OF DELAWARE,

Defendant.

Civil Action No. 20-cv-1693-SB

PLAINTIFFS' INITIAL DISCLOSURES

Plaintiffs Penny Ninivaggi, Michael Ninivaggi, Cailin Nigrelli, James Nigrelli, Todd Mickey, Jake Mickey, and Hannah Russo ("Plaintiffs"), on behalf of themselves and all others similarly situated, pursuant to Federal Rule of Civil Procedure 26(a)(1), serve their Initial Disclosures.

INTRODUCTION

These Initial Disclosures are based upon information presently known to Plaintiffs and are made without prejudice to producing, during discovery or at trial, information, documentation, or data that are subsequently discovered and determined to be relevant, or a product of ongoing investigation and/or evaluation.

With these Initial Disclosures, Plaintiffs are not identifying documents protected from disclosures by any applicable privilege. Nor do Plaintiffs waive the right to object to Defendant's discovery request on any basis.

Plaintiffs incorporate all individuals identified by all other parties in their Initial Disclosures and reserves the right to depose, and rely upon the testimony of, all such individuals in support of Plaintiffs' claims.

Lastly, Plaintiffs reserve the right to amend and/or supplement these Initial Disclosures at any time.

A. The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information.

The following individuals are likely to have discoverable information:

- **Penny Ninivaggi** (contact through counsel). Ms. Ninivaggi has knowledge or information concerning Michael Ninivaggi's attendance at University of Delaware, including the payment of tuition and fees, Michael's contract with Delaware, Michael's courses, and Michael's access to facilities.
- **Michael Ninivaggi** (contact through counsel). Mr. Ninivaggi has knowledge regarding the issues raised in the Complaint including, but not limited to, his contracts with Defendant for on-campus classes and services for the Spring 2020 semester, his payment of tuition and fees (as defined in the Complaint) payments to Defendant for the entire Spring 2020 semester; Defendant's failure to provide the on campus classes and services for which he paid; and Defendant's retention of her funds he paid for the Spring 2020 semester for on-campus classes and other services for which the tuition and Fees were paid.
- **Jake Mickey** (contact through counsel). Mr. Mickey has knowledge regarding the issues raised

in the Complaint including, but not limited to, his contracts with Defendant for on-campus classes and services for the Spring 2020 semester, his payment of tuition and Fees (as defined in the Complaint) payments to Defendant for the entire Spring 2020 semester; Defendant's failure to provide the on campus classes and services for which he paid; and Defendant's retention of his funds he paid for the Spring 2020 semester for on-campus classes and other services for which the tuition and Fees were paid.

- **Todd Mickey** (contact through counsel). Mr. Mickey has knowledge or information concerning Jake Mickey's attendance at University of Delaware, including the payment of tuition and fees, Jake's contract with Delaware, Jake's courses, and Jake's access to facilities.
- **Cailin Nigrelli** (contact through counsel). Ms. Nigrelli has knowledge regarding the issues raised in the Complaint including, but not limited to, her contracts with Defendant for on-campus classes and services for the Spring 2020 semester, her payment of tuition and Fees (as defined in the Complaint) payments to Defendant for the entire Spring 2020 semester; Defendant's failure to provide the on campus classes and services for which she paid; and Defendant's retention of her funds she paid for the Spring 2020 semester for on-campus classes and other services for which the tuition and Fees were paid.
- **James Nigrelli** (contact through counsel). Mr. Nigrelli has knowledge or information concerning Cailin Nigrelli's attendance at University of Delaware, including the payment of tuition and fees, Cailin's contract with the University of Delaware, Cailin's courses, and Cailin's access to facilities.
- **Hannah Russo** (contact through counsel). Ms. Russo has knowledge regarding the issues raised in the Complaint including, but not limited to, her contracts with Defendant for on-campus classes and services for the Spring 2020 semester, her payment of tuition and Fees (as defined in the

Complaint) payments to Defendant for the entire Spring 2020 semester; Defendant's failure to provide the on campus classes and services for which she paid; and Defendant's retention of her funds she paid for the Spring 2020 semester for on-campus classes and other services for which the tuition and Fees were paid.

- **Defendant, University of Delaware ("Defendant")** (contact through counsel). Defendant likely has knowledge regarding the issues raised in the Complaint and any of its defenses.
- **Dennis Assanis** (contact through counsel). Dr. Assanis is the President of The University of Delaware. As the leader of the University, Mr. Assanis may have knowledge regarding annual meetings with the Board of Trustees, support of academic programs, and operation of the University, as well as other information relevant to this case.
- **Robin Morgan** (contact through counsel). Dr. Morgan is Defendant's Provost and Chief Academic Officer. Dr. Morgan may have knowledge regarding decision-making authority pertaining to the transition to online learning. Additionally, she may have information related to academic judgements, communications, as well as other information relevant to this case.
- **John Long** (contact through counsel). Mr. Long serves as Executive Vice President and Chief Operating Officer. Mr. Long may have knowledge regarding budget planning, public safety, human resources, information technology investments, internal audits, as well as other information relevant to this case.
- **Glenn Carter** (contact through counsel). Mr. Carter serves as Defendant's Vice President for Communications and Marketing. Mr. Carter may have knowledge regarding marketing, advertising, communications, decision-making, academic programs, enrollment, and the transition to remote instruction, as well as other information relevant to this case.
- **Sharon Pitt** (contact through counsel). Ms. Pitt serves as Defendant's Vice President for

Information Technology. Ms. Pitt may have knowledge regarding the transition to remote instruction, announcements, as well as other information relevant to this case.

- **Lynn Okagaki** (contact through counsel). Ms. Okagaki serves as Defendant's Deputy Provost for Academic Affairs. Ms. Okagaki may have knowledge regarding University compliance, academic programs, policies, decisions, and communications regarding admission and enrollment for the 2019-2020 academic year. Additionally, she may have information regarding the decision and transition to remote instruction, as well as other information relevant to this case.
- **Rodney Morrison** (contact through counsel). Mr. Morrison serves as Defendant's Vice President for Enrollment Management. Mr. Morrison may have knowledge of University compliance and privacy, budget planning, business services, academic programs, policies, and communications regarding enrollment for the 2019-2020 academic year, as well as other information relevant to this case.
- **Michael Vaughan** (contact through counsel). Mr. Vaughan serves as Defendant's Vice President of Diversity. Mr. Vaughn may have knowledge of policies, decisions, registration, and communication regarding admission and enrollment for the 2019- 2020 academic year, as well as other information relevant to this case.
- **José-Luis Riera**, (contact through counsel). Mr. Riera serves as Defendant's Vice President of Student Life. Mr. Riera may have knowledge relating to University compliance, academic programs, policies, and communications regarding admission and enrollment for the 2019-2020 academic, as well as other information relevant to this case.
- **Unknown Members of Defendant's Board of Trustees** (contact through counsel). Members of Defendant's Board of Trustees may have knowledge regarding day-to-day management of The University of Delaware; administration, contract information, financial information, knowledge

regarding academic programs, policies, transition to remote instruction, announcements, decisions, and communications regarding enrollment for the 2019-2020 academic year, as well as other information relevant to this case.

- To the extent Plaintiffs intend to rely upon expert witnesses, those witnesses will be identified at the appropriate time pursuant to the Scheduling Order.
- Any named witness detailed in Defendant's Rule 26(a) Disclosures.

B. A copy of, or a description by category and the location of all documents, data, compilations, and tangible things in the possession, custody or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment.

Counsel for Plaintiffs have copies of Plaintiffs' Spring 2020 Schedules, Plaintiffs' Spring 2020 E-Bills, and information available on Defendant's website that is referenced in the Complaint, including Defendant's undergraduate catalog. Plaintiffs reserve the right to amend this Initial Disclosure and to use any and all documents produced by any other party or non-party in this action or any coordinated action. of, or a description by category and the location of all documents, data, compilations, and tangible things in the possession, custody or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment.

C. Computation of any category of damages claimed by the disclosing party making available for inspection and copying under Rule 24 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of the injury suffered.

On behalf of themselves and the proposed classes, as defined in the Consolidated Complaint, Plaintiffs seek actual damages and equitable relief as the Court finds just and proper, as well as reasonable attorneys' fees and costs.

Plaintiffs cannot provide a precise computation of class-wide damages at this time because

they have not obtained discovery of Defendant. Plaintiffs reserve the right to supplement this Initial Disclosure on the basis of information obtained during discovery and upon completion of Plaintiffs' ongoing claim evaluation efforts.

- D. Any insurance agreement under which any person carrying on insurance business may be liable to satisfy any part or all of the judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.**

None known to Plaintiffs.

Dated: October 6, 2021

CROSS & SIMON, LLC

/s/ Christopher P. Simon

Christopher P. Simon (No. 3697)
Michael L. Vild (No. 3042)
1105 N. Market Street, Suite 901
P.O. Box 1380
Wilmington, Delaware 19801-1380
Tel: (302) 777-4200
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mvild@crosslaw.com

-AND-

ANASTOPOULO LAW FIRM, LLC

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-AND-

**CHIMICLES SCHWARTZ KRINER &
DONALDSON-SMITH LLP**

Robert J. Kriner, Jr. (#2546)
Scott M. Tucker (#4925)
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Tel: (302) 656-2500

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Joshua D. Arisohn
888 Seventh Avenue
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Facsimile: (212) 989-9163
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ATTORNEYS FOR PLAINTIFFS

EXHIBIT 4

**Applied Marketing Science, Inc.**

303 Wyman Street, Ste 205
 Waltham, MA 02451
 +1 7812506300
 amsaccounting@ams-inc.com
 www.ams-inc.com

INVOICE

BILL TO	INVOICE	20586
Joshua D. Arisohn	DATE	06/09/2022
Partner, Bursor & Fisher, P.A.	TERMS	Net 30
888 Seventh Avenue		
New York, NY 10019		

PROJECT
 Ninivaggi v U of Delaware

SERVICES	TOTAL HOURS	HOURLY RATE	AMOUNT
Professional Services Fees, May 2022			
P. Yanes Professional Services			
- Planning & Design	3	475.00	1,425.00
- Fieldwork Monitoring & Coordination	1	475.00	475.00
C. Blasko Professional Services:			
- Planning & Design	22.50	365.00	8,212.50
G. Atik Professional Services:			
- Planning & Design	0.75	285.00	213.75
- Expert Report Development/Support	1	285.00	285.00
K. Ashley Professional Services:			
- Programming & Testing	6.25	285.00	1,781.25
R. Mendizabal Professional Services:			
- Planning & Design	11.25	285.00	3,206.25
- Programming & Testing	2	285.00	570.00
S. Schomp Professional Services:			
- Fieldwork Monitoring & Coordination	3.50	265.00	927.50
V. Nesdale Professional Services:			
- Fieldwork Monitoring & Coordination	16.50	265.00	4,372.50
Reimbursable Expenses:			
- Online Study			426.20

BALANCE DUE

\$21,894.95



Invoice

DATE : 5/9/2022

INVOICE # 20527

Joshua D. Arisohn
 Partner, Bursor & Fisher, P.A.
 888 Seventh Avenue
 New York, NY 10019

TERMS

Net 30

PROJECT

Ninivaggi v U of Delaware

Services	Total Hours	Hourly Rate	AMOUNT
Professional Services Fees, April 2022			
P. Yanes Professional Services			
- Planning & Design	8.5	475.00	4,037.50
C. Blasko Professional Services:			
- Planning & Design	12	365.00	4,380.00
R. Mendizabal Professional Services:			
- Case Document Review	0.5	285.00	142.50
- Planning & Design	7.5	285.00	2,137.50
S. Schomp Professional Services:			
- Fieldwork Monitoring & Coordination	3.25	265.00	861.25

Total Due: USD 11558.75

Fed ID# 04-3035339

For questions on this invoice, call (781) 250-6309

**Applied Marketing Science, Inc.**

303 Wyman Street, Ste 205
 Waltham, MA 02451
 (781) 250-6300
 amsaccounting@ams-inc.com
 www.ams-inc.com

INVOICE**BILL TO**

Joshua D. Arisohn
 Partner, Bursor & Fisher, P.A.
 888 Seventh Avenue
 New York, NY 10019

INVOICE

20689

DATE

07/31/2022

TERMS

Net 30

PROJECT

Ninivaggi v U of Delaware

SERVICES	TOTAL HOURS	HOURLY RATE	AMOUNT
Professional Services Fees, July 2022			
P. Yanes Professional Services			
- Planning & Design	4	475.00	1,900.00
- Expert Report Development/Support	3	475.00	1,425.00
C. Blasko Professional Services:			
- Planning & Design	19	365.00	6,935.00
- Data Entry/Coding/Analysis	8	365.00	2,920.00
- Expert Report Development/Support	17	365.00	6,205.00
K. Ashley Professional Services:			
- Programming & Testing	0.50	285.00	142.50
R. Mendizabal Professional Services:			
- Planning & Design	2	285.00	570.00
- Fieldwork Monitoring & Coordination	3.25	285.00	926.25
- Data Entry/Coding/Analysis	7	285.00	1,995.00
- Expert Report Development/Support	8.25	285.00	2,351.25
A. Mishra Professional Services:			
- Data Entry/Coding/Analysis	14.50	265.00	3,842.50
- Expert Report Development/Support	9.25	265.00	2,451.25
R. Kelley Professional Services:			
- Expert Report Development/Support	5	265.00	1,325.00

S. Schomp Professional Services:

- Fieldwork Monitoring & Coordination	8	265.00	2,120.00
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Reimbursable Expenses:

- Online Study			6,981.00
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BALANCE DUE

\$42,089.75

**Applied Marketing Science, Inc.**

303 Wyman Street, Ste 205
 Waltham, MA 02451
 (781) 250-6300
 amsaccounting@ams-inc.com
 www.ams-inc.com

INVOICE

BILL TO Joshua D. Arisohn Partner, Bursor & Fisher, P.A. 888 Seventh Avenue New York, NY 10019	INVOICE 20641 DATE 07/07/2022 TERMS Net 30
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PROJECT
 Ninivaggi v U of Delaware

SERVICES	TOTAL HOURS	HOURLY RATE	AMOUNT
Professional Services Fees, June 2022			
P. Yanes Professional Services			
- Fieldwork Monitoring & Coordination	12	475.00	5,700.00
L. Thomas Professional Services:			
- Programming & Testing	2	265.00	530.00
- Data Entry/Coding/Analysis	4	265.00	1,060.00
C. Blasko Professional Services:			
- Planning & Design	52.50	365.00	19,162.50
G. Atik Professional Services:			
- Planning & Design	0.50	285.00	142.50
- Expert Report Development/Support	4	285.00	1,140.00
K. Ashley Professional Services:			
- Programming & Testing	2.50	285.00	712.50
R. Mendizabal Professional Services:			
- Planning & Design	12	285.00	3,420.00
- Fieldwork Monitoring & Coordination	5	285.00	1,425.00
- Data Entry/Coding/Analysis	1	285.00	285.00
- Expert Report Development/Support	3.50	285.00	997.50
R. Kelley Professional Services:			
- Planning & Design	0.50	265.00	132.50

S. Schomp Professional Services:

- Fieldwork Monitoring & Coordination	11	265.00	2,915.00
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V. Nesdale Professional Services:

- Fieldwork Monitoring & Coordination	8.75	265.00	2,318.75
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Reimbursable Expenses:

- Online Study			10.00
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BALANCE DUE

\$39,951.25

EXHIBIT 5

Steven P. Gaskin, LLC

52 North Newcastle Road
 Newcastle, ME 04553 US
 +1 7818123226
 steven_gaskin@outlook.com

**INVOICE**

BILL TO
 Mr. Joshua Arisohn
 Bursor & Fisher, P. A.
 888 Seventh Ave.
 New York, NY 10019 USA

INVOICE 1260
 DATE 05/02/2022
 TERMS Net 30
 DUE DATE 06/01/2022

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
05/02/2022	Planning & Design	Univ. of Delaware - Planning & Design	2.25	800.00	1,800.00
PAYMENT					1,800.00
BALANCE DUE					\$0.00
					PAID

Exhibit
SG 0002

Steven P. Gaskin, LLC

52 North Newcastle Road
 Newcastle, ME 04553 US
 +1 7818123226
 steven_gaskin@outlook.com

**INVOICE**

BILL TO
 Mr. Joshua Arisohn
 Bursor & Fisher, P. A.
 888 Seventh Ave.
 New York, NY 10019 USA

INVOICE 1272
 DATE 06/01/2022
 TERMS Net 30
 DUE DATE 07/01/2022

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
06/01/2022	Retainer	Ninivaggi et al. v. University of Delaware - Retainer	1	10,000.00	10,000.00
06/01/2022	Planning & Design	Univ. of Delaware - Planning & Design	1	800.00	800.00
PAYMENT					10,800.00
BALANCE DUE					\$0.00
					PAID

Exhibit
SG 0003

Steven P. Gaskin, LLC

52 North Newcastle Road
Newcastle, ME 04553 US
+1 7818123226
steven_gaskin@outlook.com

**INVOICE**

BILL TO
Mr. Joshua Arisohn
Bursor & Fisher, P. A.
888 Seventh Ave.
New York, NY 10019 USA

INVOICE 1283
DATE 07/01/2022
TERMS Net 30
DUE DATE 07/31/2022

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
07/01/2022	Retainer	Ninivaggi et al. v. University of Delaware - Declaration, Survey Fielding	6.75	800.00	5,400.00

PAYMENT	5,400.00
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BALANCE DUE	\$0.00
	PAID

Exhibit
SG 0004

Steven P. Gaskin, LLC

52 North Newcastle Road
Newcastle, ME 04553 US
+1 7818123226
steven_gaskin@outlook.com

**INVOICE**

BILL TO
Mr. Joshua Arisohn
Bursor & Fisher, P. A.
888 Seventh Ave.
New York, NY 10019 USA

INVOICE 1293
DATE 08/01/2022
TERMS Net 30
DUE DATE 08/31/2022

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
08/01/2022	Analysis & Report	Univ. of Delaware - Analysis & Report	6.25	800.00	5,000.00
BALANCE DUE					\$5,000.00

Exhibit
SG 0005